Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1829

GRIFFIN B. BELL, ET AL.,

Petitioners

—*v.*—

LOUIS WOLFISH, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 23, 1978
CERTIORARI GRANTED OCTOBER 2, 1978

In the Supreme Court of the United States

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GRIFFIN B. BELL, ET AL., *Petitioners*

—*v.*—

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000

UNITED STATES OF AMERICA,
ex. rel. LOUIS WOLFISH

v.

UNITED STATES OF AMERICA et al.

DOCKET ENTRIES

DATE	PROCEEDINGS
11-28-75	Filed class action petition for writ of habeas corpus.
12-29-75	Filed Order that this proceeding is a class action on behalf of all persons detained at the Metropolitan Corr. Center. * * * FRANKEL, J m/n
1-13-76	Filed relators amended petition. (By order of Judge Frankel).
1-28-76	Filed Opinion #43799 & Order that the motion for a preliminary injunction is granted. Visiting regulations not less liberal than those in force when this suit began will remain effective until further order of this court. . . . So Ordered, FRANKEL, J nm
10-1-76	Filed Order re prelim. inj. that Respondents provide, the following telephone services for inmates at the MCC, as indicated. Provisions to remain in effect until further order of this Court or final disposition of this case. . . . FRANKEL, J. n/m & copy sent to Relators.

DATE	PROCEEDINGS

10-20-76 Filed Respondents notice of motion for partial summary judgment pursuant to Rule 56. Ret. 10-27-76.

10-20-76 Filed Respondents Rule 9(g) Statement of facts concerning which they contend there exists a genuine issue.

10-20-76 Filed Respondents Rule 9(g) Statement of facts concerning which they contend there exists no genuine issue.

10-20-76 Filed affidvt of Larry Taylor, Warden at MCC.

1-5-77 Filed affidvt of Larry Taylor, Warden of the Met. Corr. Center, in opposition to petitioner's motion for partial summary judgment.

1-5-77 Filed Opinion #45495 & Order. Petitioners have moved for partial summary judgment, & Respondents have made a cross-motion urging that they should have summary judgment now dismissing most of the claims pressed in relator's motion. For the extensive reasons indicated, petitioners are entitled to a partial decree enjoining, double celling, enforcement of the "publishers only" rule, failure to give receipts for seized property, & the practices respecting mail hereinabove to be found valid. Respondents are entitled to dismissal of the claims as to mail which have been rejected, etc. The other rulings are capable of enforcement, & should be enforced, within the next week or (10) days. Accordingly, petitioners should serve & file a proposed form of decree by 1-10-77. Respondents should respond not later than 1-13-77. Petitioner may reply by 1-17-77, whereupon a decree will be formulated & entered. . . . FRANKEL, J. n./m

DATE	PROCEEDINGS

1-19-77 Filed Order that respondents, employees, & successors, & all persons in concert with them are hereby enjoined from confining any member of the petitioner class at (MCC) except under the following conditions as indicated. Single Cell Occupancy, etc., Receipt of books, periodicals & other reading material. Receipts for the seizure of items. Mail. Further Ordered that so much of the amended petition as seeks an order enjoining respondents from opening & inspecting mail from persons other than petitioners attys or the courts, etc. is dismissed with prejudice; and that petitioners' motion for partial summary judgment & respondents' cross-motion for summary judgment are in all other respects denied. . . . FRANKEL, J. n/m

2-8-77 Trial begun & continued.

3-1-77 Trial con't.

3-2-77 Trial con't.

3-3-77 Trial con't.

3-4-77 Trial con't.

3-5-77 Trial con't.

3-8-77 Trial con't.

3-9-77 Trial con't.

3-10-77 Trial con't.

3-11-77 Trial con't.

3-14-77 Trial con't.

3-15-77 Trial con't.

3-16-77 Trial con't.

3-17-77 Trial con't.

3-18-77 Trial con't. Petitioners Rest.

DATE	PROCEEDINGS

3-18-77 Filed Respondent's Notice of Appeal from the USCAA from the opinion dtd: 1-5-77 and order dtd: 1-19-77. Mailed copies.

4-6-77 Filed petitioners' Notice of Motion for summary judgment.

4-6-77 Filed petitioners' Statement pursuant to General Rule 9-G S.D.N.Y. in support of motion.

4-6-77 Filed petitioners' reply memorandum in support of their application for partial summary judgment.

4-6-77 Filed Affidavit of Dr. William W. Menniger, sworn to on December 27-76.

8-30-77 Filed Stipulation of facts between parties.

9-15-77 Filed Opinion #46335 . . . . Accordingly, counsel for petitioners will serve and file a proposed form of final decree. Respondents will serve and file objections to the proposed form and counter-proposals to substitute for the portions deemed objectionable. These submissions and the court's final decree will be complete with all reasonable speed. . . . So Ordered. . . . FRANKEL, J. m/n

10-13-77 Filed Partial Judgment . . . ordered that respondents their agents, eyc. all enjoined from confining any members of the petitioner class at the MCC except under the following conditions (see Judgment) . . . Frankel, J. mn Judgment. 10-13-77 clerk

10-21-77 Filed Respondents Notice of Appeal to the USCA 2nd Circuit from the Opinion dated 9-15-77 & the Partial Judgment ent. 10-13-77 except as to the issue of "Exercise during confinement" decided at pp. 101-102 of the opinion & in paragraph 22 of Partial Judgment as amended by Memorandum filed 10-18-77.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

UNITED STATES ex rel., LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. MCCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORIS TORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSIONS, *et al.*, RELATORS

—against—

THE HONORABLE EDWARD LEVI, Attorney General of the United States, NORMAN CARLSON, Director of the Federal Bureau of Prisons; and LARRY TAYLOR, Warden of the Metropolitan Correctional Center, *et al.*, RESPONDENTS

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Michael Young, Esq., the Statement Pursuant to Rule 9-G of the General Rules of the Southern District of New York, the memorandum of law in support of Relators' motion for summary judgment, and all the other papers heretofore filed in this proceeding, the undersigned will move this Court on the twenty-seventh day of September, 1976, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure enjoining Respondents from:

(1) double-celling;

(2) requiring Relators to sleep in corridors, balconies or other non-residential areas;

(3) enforcing the "Publisher Only" rule;

violate their rights. This motion for summary judgment is made with regard to the issues of (1) overcrowding which forces double-celling and housing of some Relators in areas such as balconies, corridors, and "multi-purpose" dayroom spaces; (2) forbidding Relators from receiving books, periodicals and newspapers from family and friends; (3) restrictions on the receipt of personal property; (4) inadequate access to legal materials; (5) inadequate access to news sources; (6) refusal to allow relators' to observe searches of their rooms and to receive a receipt for any item confiscated; and (7) interference with Relators' mail.

4. Relators are persons who are confined in the MCC either while awaiting trial, serving sentence, or awaiting shipment to another prison. The law in this Circuit makes clear that they possess basic human rights which may not be unjustifiably abridged. Indeed, any restriction placed upon relators who are incarcerated solely to assure their appearance at trial is unlawful in the absence of a compelling necessity. Yet there is no necessity for the harsh conditions and practices which are imposed upon Relators at MCC and which are the subject of this motion.

5. The admissions contained in Respondents' "Return to Relators" amended petition (Return), in their responses to Relators interrogatories (Interrogatory Response) and in their papers and affidavits reveal that there can be no genuine dispute concerning the facts relevant to the determination of the issues raised by this motion. The accompanying Memorandum of Law demonstrates that upon these undisputed facts, relators are entitled to judgment as a matter of law.

Overcrowding

6. Although designed for no more than 449 inmates (Return, ¶ 7), the inmate population has been above that number virtually all of the time since the institution opened, and has on occasion ranged as high as approximately 600 (Return, ¶ 7) (population summary sheets).

7. The residential rooms on Floors 3, 5, 7, 9, and 11 North were designed to house a single person (Return, ¶ 7). Each of these rooms contains approximately 76 square feet.

8. Paul Silver, the architect who designed MCC has stated in sworn testimony:

> Q. Mr. Silver, in your estimation, although you planned the Metropolitan Correctional Center for a certain capacity, would it be possible in fact for that institution to absorb additional people?
>
> * * * *
>
> A. See, there are certain criteria that were brought into the planning principle. For example, the rule that we began with was that for every room we would only provide one—to put one man in a room. I think you have a room that is very, very basic planning principle. That establishes a population capacity.
>
> Dormitories are a much more flexible kind of a thing, you see. That is the only real area in that particular facility. One of the reasons why there's been a tendency to go to single rooms is because it's a very clear and apparent violation of capacity when you try to put two people in a room. You can't put one and a third persons in a room. You can always up the population of a space, in which you put people in, and you can through more imaginative planning get better utilization of the space but there is an absoluteness of a room which is designed for one person, and to try to convert it into a two-person room, it's a clear violation of the capability of that space. There is no question there. There is more than enough, you know, objections to double-celling.
> MR. TOBIAS: Nothing further, your Honor.
> MR. HERMAN: I have nothing further.
> THE COURT: Thank you very much, Mr. Silver.
>
> *Ambrose* v. *Malcolm*, 76 Civ. 190 (S.D.N.Y.), Transcript of Feb. 4, 1976 at 267-8.

9. Overcrowding at MCC has resulted in the imposition upon a fluctuating number of relators of double celling of two persons in rooms which are designed for only one (Return, ¶ 8).

10. At various times since MCC opened, up to and including the present time, numbers of Relators have not even been provided with living space in a residential room of the institution, but rather have been required to sleep on cots, beds, or mattresses placed in corridors and common areas of the various housing units or in the room originally designed for magistrate's proceedings (Return, ¶ 10).

11. The Court of Appeals has determined that such double celling is a dehumanizing practice which constitutes a due process deprivation and which may not be condoned or tolerated (See Relator's Memorandum of Law at 5-12).

Refusal to Allow Relators to Receive Books, Periodicals, or Newspapers from Family and Friends

12. Respondens have enforced a "Publishers-Only" rule at MCC which prohibits Relators from receiving literature from any source other than the publisher or "book clubs" (Return, ¶ 72). Family members or friends may not, under this rule, provide Relators any published material either directly or through the mails.

13. The "Publishers-Only" rule is a violation of Relators' First Amendment rights (See Relator's Memorandum of Law at 13-15).

Restrictions on Receipt of Personal Property

14. Relators are severly limited in the amount of personal property they may possess. Except on rare occasions such as Christmas and certain Jewish holidays Relators may not receive food stuffs from their family to supplement the daily institutional diet (Return, ¶ 88; Interrogatory Answer No. 111). In addition Relators are not permitted to receive or possess electric shavers or personal typewriters at MCC (return, ¶ 88). Relators

may however, purchase items such as portable radios from the Commissary if they have enough money.

15. MCC has an operational flouroscope and magnetometer which could be used to inspect packages for contraband.

16. The restrictions placed upon the receipt of personal items are unnecessary and unjustified by a compelling necessity (See Relator's Memorandum of Law at 16-17).

17. In April, 1976, MCC possessed a collection of legal books, as set forth in Exhibit A to this affidavit (See Interrogatory Response 88 and Exhibit 86). This collection was substantially in compliance with Federal Bureau of Prisons Policy Statement No. 2001.2B (Set forth as Exhibit B to this affidavit).

18. In September, 1976, MCC possessed a collection of legal books, as set forth in Exhibit C to this affidavit. This collection lacks such basic research tools as the United States Law Week (both the Supreme Court and the General Law sections), the New York Law Journal, Wright's *Federal Practice and Procedure*, Stern and Gressman's *Supreme Court Practice*, Weinstein on *Evidence*, Frankel on *Criminal Sentences*, or a complete set of the Federal Bureau of Prisons Policy Statements. Additionally, it contains no state penal codes, codes of criminal procedure, or case law for any of the states in the Second Circuit or New Jersey, although a significant number of inmates at MCC are under indictment or state sentence from those jurisdictions.

19. MCC has no legal assistance program to aid inmates in the preparation of their legal papers.

20. The collection of legal materials which does exist is located in a storeroom on the second floor of MCC away from the living areas. Relators may not visit this "library" area or conduct research there. Rather, they must submit a request for a particular book to be sent to them (Return, ¶ 63).

21. Relators may only borrow three books from the library at one time (See "Metropolitan Correctional Center, The Law Library" set forth as Exhibit D to this affidavit).

22. Relators are not even provided with a complete list of the books in the law library (Compare Exhibit D with Exhibit C).

23. Denial of personal access to an adequately maintained Law Library deprives Relators of their constitutional right of effective access to court (See Relator's Memorandum of Law at 18-24).

Restriction on Access to News

24. When this lawsuit commenced, Relators were given no opportunity to purchase newspapers at MCC (Return, ¶ 73). In June, 1976, certain newspapers became available for purchase in the housing units at MCC.

25. A significant number of Relators incarcerated at MCC are indigent.

26. No free newspapers are available for relators to read, either in the residential units or through the library.

27. News periodicals are not sold at MCC, nor are they made available in the housing units or through the library.

28. This denial of access to concurrent news sources is violative of Relators constitutional right to receive information which can not be justified by any legitimate penological need (See Relators' Memorandum of Law at 25-27).

Searches

29. Relators are not permitted to observe regular institutional searches of their rooms (Return, ¶ 85). Moreover, they are not provided with receipt for any items confiscated during searches (Interrogatory Response 106 (b) and (c)).

30. There is no valid security rationale which excuses this invasion of Relator's privacy and the security of their property (See Relator's Memorandum of Law at 28-29).

Restrictions on Mail

31. Respondents permit Relators to engage in private conversations with their family and friends during visits and by telephone (Affidavit of Larry Taylor, submitted in response to Relator's motion for Preliminary Injunction, January 19, 1976; Response to Relators' Interrogatory #16). However, all out-going and incoming mail from Relators to and from their family and friends is opened and inspected and sometimes read outside Relators' presence by Respondents (Return, ¶¶ 76, 77).*

32. There is no valid security justification for this infringement upon Relator's and their family's constitutional rights (See Relator's Memorandum of Law at 30-35).

WHEREFORE, Relator's motion for summary judgment should be granted enjoining Respondents from (1) double celling; (2) housing any Relators in other than designated sleeping areas; (3) enforcing the "Publisher Only" rule; (4) restricting the possession of personal property; (5) denying personal access to adequate legal materials; (6) denying adequate access to news sources; (7) preventing Relators from viewing searches of their cells and not providing receipts for

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* Respondents concede in their Return at ¶ 77 that Relators' incoming and outgoing personal mail "may be spot checked by members of the MCC staff." Bureau of Prisons Policy statement 7300.1A (attached hereto as Exhibit E) authorizes such "spot-checking" and states:

> Spot-checking is defined as a procedure for reviewing or scanning a limited number of all letters received for mailing or for distribution to the inmate body. For example, spot-checking might involve scanning one of every ten or fifteen letters being mailed from or received at the institution. It does not imply that every letter should be scanned. It should be done frequently enough to maintain security, learn about a particular problem confronting the inmate or alert the staff to any matter that may help in evaluating the inmate's progress. (*Id.* at 3)

From this definition, it is clear that "spot-checking" is a euphemism for "reading" certain inmate mail.

confiscated items, and (8) interfering with Relators' mail.

/s/ Michael A. Young
MICHAEL A. YOUNG

Sworn to before me this 16th day of September, 1976

/s/ Phylis Skloot Bamberger
PHYLIS SKLOOT BAMBERGER
Notary Public
State of New York
No. 31-4500431
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

UNITED STATES ex rel., LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. MCCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORIS TORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSIONS, *et al.*, RELATORS

—against—

THE HONORABLE EDWARD LEVI, Attorney General of the United States, NORMAN CARLSON, Director of the Federal Bureau of Prisons; and LARRY TAYLOR, Warden of the Metropolitan Correctional Center, *et al.*, RESPONDENTS

STATEMENT PURSUANT TO RULE 9-G OF THE GENERAL RULES OF THE SOUTHERN DISTRICT OF NEW YORK

Pursuant to Rule 9-G of the general rules of this Court, Relators submit, by their attorney, Michael A. Young, the following in support of their motion for summary judgment in their favor on the ground that there are no genuine issues of material fact to be tried on the claims mentioned below and Relators are entitled to judgment in their favor as a matter of law.

1. Relators are persons who are confined at the New York Metropolitan Correctional Center (MCC), either while awaiting trial, serving sentence, or awaiting shipment to another prison.

Overcrowding

2. Since its opening in August, 1975, overcrowding at MCC has resulted in the double celling of a fluctuating number of Relators by confinement of two Relators in a single residential room designed to house only one person.

3. At various times other Relators have been forced to sleep on cots, beds, or mattresses placed in balconies and other common areas of the facility.

"Publisher Only" Rule

4. Relators are prohibited from receiving literature from their family or friends at MCC. The only reading material which they may receive from outside the facility must be sent directly from the publisher or in some cases "book clubs".

Personal Property

5. Except on rare occasions at religious holidays Relators may not receive packages or food stuffs from their families or friends.

6. Relators are not permitted to receive or possess electric shavers or personal typewriters.

Access to Legal Materials

7. The law library collection at the MCC lacks a variety of federal and state law research materials.

8. The legal collection is located in a store room. Relators may not visit this area to conduct legal research, but rather must submit a written request for a particular book to be sent to them.

Access to News

9. Relators are not given daily free access to newspapers and periodicals. Moreover, until May, 1976, Relators could not purchase newspapers in the institution. Relators are still not permitted to purchase news periodicals.

Searches

10. Respondents refuse to permit Relators to observe searches of their rooms and personal effects.

11. Relators are not provided receipts for any personal items confiscated during such searches.

Mail

12. Relators are permitted to have private conversations with family members and friends during visits and by telephone. Nevertheless, MCC rules permit all incoming and outgoing mail with the exception of mail from attorneys, courts and public officials to be opened, inspected, and occasionally read without cause outside Relators' presence. These rules also permit the opening and inspection of mail from attorneys and the courts without cause.

/s/ Michael A. Young
MICHAEL A. YOUNG
PHYLIS SKLOOT BAMBERGER
Attorneys for Relators
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MICHAEL MUSHLIN, ESQ.
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

[Filed U.S. District Court 10-20-76]

UNITED STATES OF AMERICA *ex rel.*,
LOUIS WOLFISH, *et al.*, RELATORS

v.

EDWARD LEVI, *et al.*, RESPONDENTS

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the Rule 9(g) Statements, affidavits, and memorandum of law submitted herewith, respondents, by their attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, will bring on for hearing on the 27th day of October, 1976, in Room 618, United States Courthouse, Foley Square, New York, New York, at such time as the Court may direct, a motion for an order granting partial summary judgment in favor of respondents pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Dated: New York, New York
October 18, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Respondents

By: _____
FREDERICK P. SCHAFFER
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TO: THE LEGAL AID SOCIETY
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U.S. Courthouse, Room 509
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

UNITED STATES OF AMERICA *ex rel.*
LOUIS WOLFISH, *et al.*, RELATORS

—against—

EDWARD LEVI, *et al.*, RESPONDENTS

RESPONDENTS' RULE 9(g) STATEMENT OF FACTS CONCERNING WHICH THEY CONTEND THERE EXISTS A GENUINE ISSUE

Pursuant to Rule 9(g) of the General Rules of this Court, the respondents submit that there are genuine issues to be tried as to the following material facts relating to relators' motion for summary judgment dated September 16, 1976:

1. The effect or impact on the physical and mental health and well-being of inmates at the Metropolitan Correctional Center ("MCC") resulting from the double-bunking of some inmates at the MCC.

2. The effect or impact on the physical and mental health and well-being of inmates at the MCC resulting from the temporary confinement of inmates in non-residential areas of the MCC.

3. The duration and frequency of the temporary confinement of inmates in non-residential areas of the MCC.

4. The adequacy of the facilities, accommodations, staff and services at the MCC to meet the needs of the inmates when more than 499 individuals are confined at the MCC.

5. The specific conditions under which inmates have been double-bunked or temporarily confined in non-residential areas of the MCC, including but not limited to the description of residential units at the MCC which is contained in paragraph 1 of Respondents' other 9(g) Statement and incorporated herein by reference.

6. The measures taken by officials at the MCC and Bureau of Prisons to transfer and transport individuals out of the MCC as quickly as possible.

7. The adequacy of the MCC general library.

8. The burden, effect or impact on inmates at the MCC of the publisher only rule.

9. The burden, effect, or impact on inmates at the MCC resulting from their inability to conduct legal research in the law library.

Dated: New York, New York
October 18, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Respondents

By: /s/ Frederick P. Schaffer
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

[Filed U.S. District Court 10-27-76]

UNITED STATES *ex rel.* WOLFISH, *et al.*, RELATORS

v.

EDWARD LEVI, *et al.*, RESPONDENTS

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center ("MCC") and as such I am a respondent in this action. I am familiar with the matters set forth herein and I submit this affidavit in opposition to relators' motion for partial summary judgment and in support of respondents' cross-motion for summary judgment.

Double-Bunking and Overcrowding

2. As set forth in my previous affidavit of December 10, 1975, paragraphs 2 through 7, which was submitted in this action, the MCC has placed double-bunks in some of the residential rooms of the MCC to accommodate an expected rise in the inmate population. The number of double-bunked rooms (excluding the dormitory which has 60 double-bunks or 120 beds) is set forth in paragraph 1 of respondents' Rule 9(g) statement.

3. In addition to installing those double-bunks to meet the expected rise in population, the MCC has taken certain measures in an attempt to reduce the population at the MCC (*See* Return to the Amended Petition, dated February 13, 1976, paragraph 7.) Since approximately May 11, 1976, Bureau of Prisons' buses transporting in-

dividuals between Bureau correctional facilities have been rerouted and diverted from the MCC in order to minimize the instances when the MCC is required to house, either over night or for a few days, such individuals who are in transit. Whereas, previously the Bureau bus was stopping at the MCC approximately twice a week, it now comes to the MCC once per month, except in an emergency situation. At the same time, the Bureau of Prisons assigned a 22-seat bus to the MCC for our use in transporting individuals between the MCC and other Bureau correctional facilities.* The regular schedule for this bus is annexed hereto and made a part hereof as Exhibit "1". In addition, we have now been authorized to make an additional run on either Thursdays or Fridays when needed. The MCC also has a 9-seat van which is used to transport inmates.

4. Individuals going to areas outside of the MCC regular bus route are transported from the MCC through the Prisoner Coordination Unit in the U.S. Marshal's office. The MCC is working with the U.S. Marshal's office to maximize efforts to move prisoners from the MCC as soon as possible after they have been designated to another federal institution, or the writ bringing them to the MCC has been satisfied.

5. It is the MCC policy to assign and designate an inmate for confinement at a particular correctional institution within 1 or 2 days after the MCC receives the inmate's Judgment and Commitment from the sentencing court; the inmate is then transferred from the MCC to the designated facility at the earliest possible time. As part of our effort to speed-up the designations and transfers from the MCC, we have reorganized the Receiving and Discharge Section at the MCC, added a full-time supervisor for that unit and a full-time case management coordinator for faster and more efficient processing and designation.

6. We have also increased the number of our referrals of short term offenders to community treatment

* A new bus to replace the present one is expected to arrive for use beginning in approximately December; this replacement has a capacity of 32 seats.

centers and the Federal Prison Camp at Allenwood, Pennsylvania which has recently increased its capacity. We have attempted to increase our contracts with detention facilities in the surrounding areas to house individuals in federal custody but because of increased populations in those institutions we have been successful.

7. Although these efforts have not been completely successful in permanently reducing the population at the MCC, they have helped to keep the average population well below 600. *See* MCC Daily Population Log Summary for each day since August 2, 1975 (the day the MCC opened) setting forth the population count at the MCC which is annexed hereto as Exhibit "2". Indeed, although we can not accurately predict what our population may increase to, up to this time we have avoided reaching a population count of 620 which was projected last December (Taylor Affidavit, dated December 10, 1975, ¶ 3.)

8. The above-described procedures have also helped us to minimize the number of occasions when it has been necessary to even temporarily confine inmates in common areas. When such an emergency situation occurs, the MCC policy is to first fill all available beds (except in the women's unit and the protective custody unit) and then assign individuals to cots placed in the commons areas; as soon as rooms become vacant, inmates housed in the commons areas are reassigned to such rooms. Particularly within the last four months, on the few occasions when it has been necessary to house individuals in commons areas, that situation has lasted for only approximately 1 or 2 nights. Moreover, except for the evening of October 13, 1976 when six individuals were assigned to mattresses (rather than cots) that situation had not occurred since approximately February 1976. Indeed, the need to resort to such accommodations on October 13, 1976 was due to a rapid increase in the population which we were unable to move out of the MCC because the MCC bus had broken down. That situation lasted for that night only, and thereafter we were able to rapidly reduce the population by having special runs on Friday, October 15, and Saturday, Oc-

tober 16, as well as the regularly scheduled run on Monday, October 18, 1976.

Publisher Only Rule and Possession of Personal Property

9. The introduction into the MCC of packages from outside the institution creates serious problems of security and administrative manageability. A careful visual, tactile and perhaps chemical or taste analysis of each package sent to the institution would be necessary in order to prevent the introduction of contraband such as drugs, alcohol, weapons and money, all of which pose a serious threat to the security and good order of the MCC. For some packages, such as hard cover books, it may very well be necessary to damage the package (remove the cover) to make a proper and thorough search; in the case of all books and magazines, it would be necessary to leaf through every page in order to insure that money and other contraband were not inserted between the pages. This search process would take a substantial and inordinate amount of available staff time. Moreover, in the case of food packages, a serious health hazard would be created due to possible spoilage and by attracting insects and vermin. Finally, the maintenance of order and discipline within the MCC demands a limit on the possible inequalities between inmates in terms of the value and amount of personal property they may possess in the MCC so as to avoid jealousies, thefts and fights relating to personal property.

10. Because of these problems, the MCC has adopted the rule whereby an inmate may receive reading material from outside the institution only if it comes directly from the publisher or a book club. In our view, there is relatively little risk that material received directly from a publisher or book club would contain contraband, and therefore, the security problems are significantly reduced without a drastic drain on staff resources. In order to provide inmates with alternate sources of reading material, the MCC maintains a general library, sells newspapers and distributes magazines as more specifically described in the accompanying affidavit of Robert Harris, Education Specialist at the MCC.

11. Further, the MCC prohibits receipt of other types of packages from outside the institution, with the exception of special food packages at Christmas and certain Jewish holidays,* as noted above, this limitation is necessary in light of the problems discussed in paragraph 9 above. Inmates are, however, permitted to purchase a wide variety of personal and prepackaged food items and fruit from the MCC commissary. A copy of the current MCC commissary list is annexed hereto as Exhibit "3". A limit of $15.00 per week, or a total of $45.00 per month, has been placed on purchases by inmates from the commissary (with the exceptions noted on Exhibit "3") in order to minimize the risk of thefts, fights and tension as stated above.

Access to the Law Library

12. In addition to space limits in the law library, it would require a substantial amount of additional staff time to escort inmates to the law library and also supervise them during the time that they are conducting legal research. Because of these problems, it has been necessary for the MCC to adopt a system whereby inmates request books from the law library and the books are thereafter brought to them. We believe that this system provides inmates with reasonable access to legal materials.

Room Searches and Contraband

13. During a formal unit shakedown, when a particular portion of a residential unit is cleared of inmates and a search conducted, the MCC does not permit an inmate to watch a search of his room; during the less formal searches which are conducted more often, it is also not advisable to have inmates present during searches, although on these less formal shakedowns correctional officers have the discretion to permit the inmate

* For the Jewish Holidays, the food packages are brought in through the Food Service Dept.

to stand at the doorway to his room to observe the search. These rules on searches are necessary for the following security reasons: (a) to be effective, searches must be carried out at random times, when inmates may not be in their residential units; (b) to permit inmates to be present would enable them to discover where particular correctional officers most often conduct their searches; (c) inmates' presence pose the risk of violent confrontation between inmates and correctional officers when the inmate is seeking to conceal contraband; (d) an inmate's presence would also enable him to move contraband while the officer is conducting the search.

14. When contraband is found of a sufficiently serious nature to warrant disciplinary proceedings (*e.g.*, hazardous contraband, or items of more than nominal value) the inmate receives a written incident report which describes the contraband which has been seized. Much of the contraband that is seized is either institution property not authorized for possession by the inmate, or institution property which, although authorized for inmate use, has been altered; money which is seized is paid into the United States Treasury. In instances where nuisance contraband is seized, and does not result in any disciplinary proceeding, the inspecting officer may give the inmate oral notification of what was seized.

Inmate Mail

15. The MCC adheres to Bureau of Prison Policy Statement 7300.1A regarding processing of inmate mail. As set forth in paragraph 6b therein, the MCC scans, on a random basis, incoming and outgoing personal mail. This rule is essential to the furtherance of two important interests of the institution unrelated to suppression of expression. First, spot-checking of such mail is necessary to discourage and prevent escape attempts. Although telephone calls and personal visits are not similarly monitored, the possible use of the mails for more detailed communication of escape plans, including maps or diagrams, justifies closer attention to letters than to oral communication. Second, spot-checking letters to and from sentenced inmates can be extremely helpful in alert-

ing the staff to problems facing such inmates or to other matters which may help in evaluating their progress or institutional adjustment, thereby assisting the goal of rehabilitation.

16. The inspection of outgoing personal mail is necessary in order to prevent the sending of money and other contraband, including escape plans, diagrams, key molds, from the MCC. It is particularly important that this inspection be carried on as a regular procedure in order to insure that illicit activities, of which the staff may have no prior knowledge, may effectively be ended at the earliest possible time.

WHEREFORE, it is respectfully requested that relators' motion for partial summary judgment be denied, and respondents' motion for partial summary judgment be granted.

/s/ Larry Taylor
LARRY TAYLOR
Warden, MCC

Sworn before me this the 19th day of October, 1976

/s/ [Illegible]

A—98

METROPOLITAN CORRECTION CENTER

150 PARK ROW
NEW YORK NEW YORK

NAME _____ INMATE NUMBER _____

UNIT NUMBER _____ ROOM LETTER _____ ROOM NUMBER _____

AMOUNT OF PURCHASE _____ BALANCE AFTER SALE _____

QUANTITY	ITEM	PRICE
____	B & H DELUXE	.45
____	PKS B & H 100'S	.35
____	PKS PALL MALL	.35
____	PKS MARLBORO	.30
____	PKS SINSTON	.30
____	PKS WINSTON 100'S	.35
____	PKS VICEROY	.30
____	PKS KENTS	.30
____	PKS SALEM	.30
____	PKS KOOLS	.30
____	PKS APPLE TOBACCO	.45
____	PKS CHERRY TOBACCO	.45
____	PKS MIXTURE #79	.45
____	PKS PIPE FILTERS	.10
____	PKS PIPE CLEANERS	.25
____	EA CORN COB PIPE	.45
____	EA GARCIA BEGA REGALOS	.20
____	EA GARCIA VEGA GALANT	.20
____	EA PALMA THROUOUTS	.15
____	EA POUND CAKES	1.05
____	EAH COFFEE CAKES	1.05
____	EA FIG NEWTOWNS	.80
____	EA LORNA DOONES	.65XXXX
____	EA MAYFAIR ASST.	.80
____	EA CHIP AHOY	.90
____	EA CHEESE NIPS	.65
____	EA RITZ CRACKERS	.75
____	EA GINGER SNAPS	.85
____	EA POTATO CHIPS	.45
____	EA PRETZELS	.50
____	EA FRITO CORN CHIPS	.45
____	EA CHEETOS	.55
____	EA COCKTAIL NUTS	.65
____	EA MIXED NUTS	.85
____	EA CASHEW NUTS	1.15
____	EA CHERRY PEPPERS	.60
____	EA SLIM JIMS	.20
____	EA 3MUSKETEERS	.15
____	EA SNICKERS	.15
____	EA HERSHEY ALMONDS	.15
____	EA MR. GOODBAR	.15
____	EA LIFESAVERS	.15
____	EA PENNY CANDY	.01
____	EA VICTORS COUGH DROPS	.20
____	EA BIC PENS	.20
____	EA PLASTIC PITCHERS	.70
____	EA " MUGS WITH HANDLE	.30
____	EA " GLASS TUMBLER	.30
____	EA APPLE PIES	.20
____	EA CHERRY PIES	.20

QUANTITY	ITEM	PRICE
____	EA TANG - ORANGE	2.20
____	EA GRAPEFRUIT	1.20
____	EA SHASTA	.20
____	A - CREME	
____	B - ROOT BEER	
	C - BLACK CHERRY	
	D - GRAPE	
	E - GINGER ALE	
	F - COLA	
____	EA MAXWELL HOUSE INST	2.30
____	EA NESTLE CREAMER	.95
____	EA TASTERS CHOICE	3.45
____	EA INSTANT HOT CHOCOLATE	.10
____	EA DOMINO SUGAR CUBE	1.20
____	TETLEY TEA	1.35
____	EA PROTEIN 29 SET	1.05
____	EA PROTEIN 21 SHAMPOO	.95XXXX
____	EA PRELL SHAMPOO	.80
____	EA HEAD & SHOULDERS	.80
____	EA ADORN	1.35
____	EA TAME	1.35
____	EA DIPPIDY DOO	1.20
____	EA ULTRA SHEEN	2.30
____	EA DIXIE PEACH - LGE	.80
____	EA DIXIE PEACH - SMALL	.55
____	EA BOBBY PINS	.30
____	EA COMB & BRUSH SET	1.10
____	EA AFRO COMB	.55
____	EA BARBER COMB	.30
____	EA AFRO PICK	.75
____	EA CURLER COMB	.40
____	EA FINGER NAIL CLIPPER	.30
____	EA TOE NAIL CLIPPER	.30
____	EA TWEEZERS	.50
____	EA SEWING KIT	.80
____	EA HAIR ROLLERS-FOAM	.70
____	EA HAIR ROLLERS-PLASTIC	.40
____	EA LAVORIS MOUTHWASH	.80
____	EA CLOSEUP TOOTHPASTE	1.05
____	EA POLIGRIP	1.05
____	EA POLIDENT	1.15
____	EA MESSANGELL DOUCHE	1.05
____	EA TAMPAX 40'S	1.80
____	A - REGULAR B - SUPER	
____	EA FEMININE SYRINGE	3.05
____	EA EMORY BOARDS	.30
____	EA DENTAL FLOSS	.60
____	EA NOXEMA SKIN CREAM	1.20
____	EA ARTRA SKIN TONE	1.30
____	EA HENNEN'S BABY POWDER	.80
____	EA HENNEN'S BABY OIL	.75
____	EA HENNEN'S BATH TALC	1.00
____	EA ARMENS POWDER	1.00
____	EA QUINSANA FOOT POWDER	1.00
____	EA JERGEN'S LOTION	1.40
____	EA CHAP STICK	.45
____	EA AFRO SHEEN HAND-BODY LOTION	1.00

**********PLEASE CIRCLE ITEMS YOU WISH TO RECEIVE**********

28

____	EA GILLETTE TRAC 2 SET	3.50
____	EA GILLETTE TRAC 2 BLDG	1.30
____	EA GILLETTE DBL EDGE SET	1.25
____	EA GILLETTE DBL EDGE BLD	.85
____	EA MAGIC SHAVE - BLUE	.70
____	EA MAGIC SHAVE - RED	.70
____	EA MAGIC SHAVE - GOLD	.85
____	EA SHAVING BRUSH	1.20
____	EA STYPEC STICK	.25
____	EA AFTA SHAVE	.95
____	EA Q TIPS	.50
____	EA GRIFFIN SHOE POLISH	.25
	A - BLACK B - BROWN	
____	EA EYEBROW PENCILS - BLACK	.55
____	EA EYE SHADOW	.90
	A - SAPPHIRE BLUE	
	B - PERL WHITE	
____	EA MASCARA	.80
	A - BROWN	
	B - BLACK	
____	EA EYEBROW LINER	1.00
	A-BLK B-DK BRN C- BRN	
____	EA ANGEL FACE COMPACT	.85
	A-RACHAEL B-NEW IVORY	
	C-SUN TAN D-TAWNY E-TROPIC SUN	
____	EA APPLES	15
____	EA ORANGES	.15
____	EA GRAPEFRUITS	.25
____	EA NICKELS ($2.00 MINIMUM)	2.00
____	[illegible]	

WATCHES

____	EA WOMEN'S A	8.05
____	EA WOMEN'S B	10.20
____	EA MEN'S A	8.85
____	EA MENS B	10.90

BATTERIES

____	EA SIZE AA	.25
____	EA SIZE C	.30
____	EA SIZE D	.30
____	EA SIZE 9V	.39
____	EA SOAP DISH	.30
____	EA	.35
____	EA IRISH SPRING	.45
____	EA SPEED STICK	.55
____	EA MUM	.55
____	EA SECRET ROLL ON	1.20
____	EA SHOWER SHOES	165
	A-SM B-MED C-LGE	
____	EA ATHLETIC SUPPORTERS	2.20
	A-SML B-MED C-LGE	
____	EA GYM SHORTS	2.95

EX

____	EA COMPOSITION NOTE BOOK	.75
____	EA RADIO	25.99

LIMITS ON THE FOLLOWING ITEMS

(1) FRUITS - 10
(2) PENNY CANDIES 25
(3) CANDY - x2 10

YOU ARE PERMITTED TO SPEND $15.00 A WEEK NOT TO EXCEED $45.00 PER MONTH

THE FOLLOWING ITEMS ARE NOT INCLUDED IN $45.00 MONTHLY LIMITATION
(1) RADIOS
(2) B TYPE WATCH
(3) GYM SUITS
(4) SNEAKERS

ALL NONCASH ITEMS ARE POSTED ONE DAY AFTER YOU RECEIVE YOUR PINK RECEIPT FROM THE WAITROOM

ALL NONCASH ITEMS EXCEPT POSTAL MONEY ORDERS ARE SUBJECT TO 30 DAY CLEARANCE.

NAME _____

[illegible] _____

INMATE NUMBER _____

SECTION _____

ROOM _____

TO INSURE THAT YOU RECEIVE THE PROPER ITEMS CIRCLE THE ITEMS THAT YOU WISH TO RECEIVE.

SNEAKERS 18.00

SIZES 8½ 9 9½ 10 10½ 11 11½ 12 13

SWEAT SUIT 12.90

A-SML B-MED XXLGE TEMP OUT

**********PLEASE CIRCLE ITEMS YOU WISH TO RECEIVE**********

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

UNITED STATES *ex rel.* WOLFISH, *et al.*, RELATORS

v.

EDWARD LEVI, *et al.*, RESPONDENTS

AFFIDAVIT

STATE OF KANSAS)
) ss.:
COUNTY OF SHAWNEE)

WILLIAM WALTER MENNINGER, M.D., being duly sworn, deposes and says:

1. I am a physician practicing the specialty of psychiatry, certified by the American Board of Psychiatry and Neurology. A copy of my curriculum vitae is annexed hereto and made a part of this affidavit.

2. On May 19, 1976, I visited the Metropolitan Correctional Center in New York City (the "MCC") and toured that institution. Included in my tour were those areas of the MCC where inmates were being "double-bunked," i.e. two individuals were housed in one residential room. Those areas included the Honor Unit on the second floor, Unit 3, the seventh floor and the ninth floor. In addition, I have reviewed the Respondents' 9 (g) statements in this action, dated October 19, 1976, and the affidavit of Marshall Haimes dated October 19, 1976.

3. Based upon my personal observations of conditions at the MCC, my review of the materials described in paragraph 2 above, and my experience in the field of psychiatry, particularly psychiatry as it relates to detention and correctional settings, it is my opinion that "double bunking" as practiced at the MCC should not have any significant detrimental effects on the physical

or psychological health of the inmates at that institution. Some important factors which prompt me to reach this conclusion are (a) the architectural design and finish of the residental rooms and commons areas which convey a non-penal atmosphere and a sense of openness; and (b) the limited period of confinement of any given inmate to the room itself, both in terms of time each day (locked in only for sleeping hours and two count periods), and length of stay (majority of pre-trial inmates are in the MCC 20 days or less). Although the area of some of the residential rooms used for double-bunking may not be ideal, I have not seen any evidence that the "double-celling" practice at the MCC has caused any untoward effects on individual inmates. It does not appear to be psychologically destructive or an unacceptable deprivation of privacy; and there is no evidence it has prompted any increase of deviant sexual or aggressive impulses or tendencies.

/s/ William Walter Menninger, M.D.
WILLIAM WALTER MENNINGER, M.D.

Sworn before me on this 27th day of December, 1976.
[SEAL]

/s/ Shirley Barncord 12/27/76
SHIRLEY A. BARNCORD
Notary Public

My Commision Expires September 10, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6000 (MEF)

UNITED STATES *ex rel.* WOLFISH, *et al.*, RELATORS

v.

EDWARD LEVI, *et al.*, RESPONDENTS

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center, New York, New York ("MCC") and a named respondent in this action. I am familiar with the matters set forth herein and submit this affidavit in opposition to petitioner's motion for partial summary judgment.

2. Commencing in late November 1975, the MCC started to replace single beds in some of the residential rooms with double-bunks. As set forth in my prior affidavits submitted herein (dated December 10, 1975 and October 19, 1976), double-bunks were installed in some of the residential rooms to accommodate an expected rise in the inmate population. The following schedule sets forth the present extent (and location) of double-bunking at the MCC (excluding the dormitory unit on 11-South):

UNIT	No. of Rooms Double-Bunk	Single-Bunk
Honor Unit	14	7
3	24	—
7-North	11	37
9-North	24	24

3. The process of installing these double-bunks was substantially completed by February 1976.* The number of double-bunked rooms in the Honor Unit has changed over time as (a) we increased the number of Honor Unit rooms by one (room A-206 has been added and is designated to have two beds), (b) we increased the number of rooms designated to have two beds, and (c) the number of individuals housed in this unit has fluctuated.

4. Since the time that installation of the double-bunks was completed, the number of double-bunked rooms which have actually housed 2 inmates has varied from day-to-day (up to the present maximum of 73 rooms) depending upon the size and composition of the inmate population, and the availability of single-bunked rooms. For instance, although a single-bunked room might be available in the Honor Unit, an inmate in a double-bunked room on Units 7-North or 9-North would not be assigned to that single-bunked room because of security considerations (*i.e.*, the Honor Unit is not locked in and is under less supervision than the other units); likewise, if a single-bunked room is available on 5-South (women's unit), a double-bunked inmate from 7-North or 9-North, all of whom are male, would not be assigned to that single-bunked room. In addition, the MCC's policy is to house pre-trial inmates separately from post-conviction inmates to the greatest extent possible, and therefore, if a single-bunked room is available in a post-conviction unit, a pre-trial detainee would not generally be assigned to that room and would be assigned to a pretrial unit and possibly a double-bunked room there (if no single-bunked rooms were available). Although Unit 3 has the capacity to house 48 inmates (all 24 rooms are double-bunked), the MCC has placed a limit of 40 as the maximum number of inmates to be housed in this unit. On a few occasions in the past, the total in this unit reached 41 inmates; for the past several months, the average number of inmates in this unit has been 37. As set forth in the Rule 9(g) Statement, this unit is used to

* Respondents Rule 9(g) Statement, p. 21, erroneously noted that 23 rooms on 9-North, rather than 24 rooms, were double-bunked.

house inmates in protective custody, and because of that fact, inmates from the general population can not be housed in this unit.

5. Consistent with these above-described constraints, I have, however, directed and instructed the unit managers to minimize the use of double-bunking by seeking to first fill all available rooms on a one-person-per-room basis and then, only if needed, to assign inmates to the second bunk. I have further directed the unit managers that when a single-bunked room becomes available in a unit, the inmate in that unit with the longest period of assignment to a double-bunked room should be reassigned and transferred to the single-bunked room. Although on occasion these various policies and directives have not uniformly been implemented, substantial progress has been made in this regard, and further steps are being taken to ensure maximum conformity with the above-described guidelines.

/s/ Larry Taylor
LARRY TAYLOR
Warden, MCC

Sworn to this 29th day of December 1976.

/s/ [Illegible]
Notary Public

[112] * * * A At the termination of an attorney visit on the third floor, one has to undergo the same strip-search procedures, generally in the bull pen, that one undergoes when he completes a social visit; the entire strip-search procedure.

Q Would you describe what that includes?

A Describe the strip search, Mr. Young?

Q Yes.

A It includes taking off all of your clothes in front of a member of the corrections staff, generally [113] raising your arms and displaying your armpits, opening your mouth, raising your genital organs, spreading your rear cheeks, showing the bottoms of your feet, having the officer examine your clothing, and then getting dressed again.

Q All right.

A Then you have the problem of the delays in the bull pen relative to getting back up again. But there—

THE COURT: Delays in what?

THE WITNESS: The holding area, your Honor, on the third floor, where you wait again for an escort to go back up. And when you get back up, you have another strange problem because the vast majority of the legal visits are held in the general visiting room. The inmate population always suspects anyone who goes down to the third floor for a visit, because that is commonly thought to be the place where government agents and government attorneys interview prospective witnesses and such. So anyone having attorney visits down there, since it is not the general procedure to have a private room, is always suspect by the inmate population.

[134] A Yes, sir.

The same [s]trip search procedure that I outlined before relative to attorney visits is standard procedure coming out of the visiting rooms.

Q And what is the effect of that search on your visit?

A Well, to me, it's senseless, it is embarassing, it is degrading.

The effect of it on the visit itself is to tell people not to bother to come unless you really want to see them

or need to see them. But that is the effect of the entire circumstances of visiting, really.

Q Could you tell me when—

THE COURT: Is that search made both before and after the visit?

THE WITNESS: No, your Honor. There are a few Correction officers that do that, but generally speaking I would say in my personal experience 45 percent of the time I am patted down going in and going through that entire procedure on the way out.

Q You testified that your schedule for social visiting is 12.30 to 3.30 certain days a week.

A That is correct.

* * * *

[219] We always get requests for certain books on prison litigation and books on federal forms and things of that nature that we just didn't have.

Basically, that's it. All case law and state law is basically what we were missing.

We also ran into problems whenever there was a popular case because we weren't allowed to Xerox the case. In certain cases I was always in favor of making a Xerox out of them and sending a Xerox to the inmate who requests a case so you don't have to send them the whole hard-cover book because they tend to get ripped out of the hard-cover book and if there is one or two cases pertaining to parole law or prison litigation or some such thing it presents a problem. So we don't have Xerox available in the education department so we never were able to do that and we had to send the book, which presented a problem. Sometimes the books were no good because the pages were missing and we still have that problem.

Q In connection with the law library, did you also have responsibility for the general law library?

A Yes, sir, I did.

Q Would you explain the nature of those responsibilities? Were they essentially the same as [220] your responsibility for the law library?

A Well, the general library was a step backwards from the law library. We still had books in boxes and

such at that point and things had to be put away. Nothing was catalogued, nothing was categorized, and there was really no system at all in the general library at that point. There were also very, very few books in circulation.

I started, I tried to just spread the word that the books were there and put books into circulation as often as possible. There was no request form for someone to ask for books from the general library, so I told people, whenever I could spread the word, to use the law library form to send up for the books.

There was no list of the books available. So really it was there but it wasn't functional when I started. I tried to make it as functional as I could.

Q And did you ever receive any requests for general categories of books—for example, westerns or—

A I used to tell people that because we had no list of titles. So if someone asked for a western or a textbook on biology or something, I would find the thing [221] that was closest to it and send up a couple of books and that was about the only way we could operate. That's about the best we could do.

Q Mr. Gardner, subsequent to your return, most recent return, to the MCC, have you complained to Mr. Harris or any other prison official concerning the availability of general library books?

A Yes, I wrote to Mr. Harris and asked him what was available. I suggested, as we have, as I had many times in the past, that a list of what's available in the general library be posted some place where people could see it and people would have some sort of form where they could request books from the general library and the books be made available.

Q Mr. Gardner, referring your attention to Petitioners' Exhibit 19 for identification, is this a cop out which you prepared for Mr. Harris?

A Prepared and sent to Mr. Harris, yes.

Q Did you receive—sorry.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 19 was received in evidence.)

Q Did you receive a response for that cop out? [222] A Well, that's tricky. I never received an answer directed at me but about a week later a notice appeared on the bulletin board saying that a list of all books was no available in the unit manager's ofgice and all you had to do was see the unit manager to see the list of books.

I think we previously discussed the lack of availability of the unit manager. I never received an answer from Mr. Harris, no.

Q Could you describe the types of books that are available in your unit itself? Are there any books available in the unit?

A Some soft-covered books. There is a little book tray with three or four levels. It, again, was empty until about six weeks ago but it was recently filled. But there are very, very few titles and there is really nothing worth reading on it. It is basically the same books over and over again. It's trashy sort, covered sort of things.

* * * *

[248] Q Has your room ever been searched?

A Yes, sir.

Q Have you always been permitted to observe that search?

A No. I've never been permitted to observe that search.

Q Have you had any materials confiscated during such searches?

A Yes, sir, I have.

Q Can you identify what those items were?

A Minor things. I had some vitamins I managed to get from sick bay that I had put into a different envelope, into a white envelope. And such contraband as Tylenol and aspirin and extra clothing, and just things that you accumulate over a period of time. Nothing serious was ever seized from me.

Q All right.

A Never anything worthy of an incident report or anything of that nature.

Q Mr. Gardner, are you permitted to receive food packages or other personal effects at the Metropolitan Correctional Center?

A Once a year. One package a year during the holidays, sir.

[249] Q All right. Are you permitted to receive personal effects, or is that limited to food?

A Are you talking about that package once a year?

Q Yes.

A It is limited to food. It is hermetically sealed. There is a note put on the bulletin board that says Johnson has discretion over what can come in and what can't come in. But it is limited to food and certain types of packages.

THE COURT: Can you get chopped liver at that time?

THE WITNESS: Fortunately my mother didn't send me the package. No, your Honor.

THE COURT: I know you don't want it.

THE WITNESS: I think not, unless I can find it hermetically sealed from a chopped liver factory.

* * * *

[255] Q Just one of the items you referred to are the Timex watches. Are you permitted to have your own watch at the Metropolitan Correctional Center?

A You are permitted to have only the Timex watches, which are sold at the commissary, but the commissary hasn't had them in many months.

Q Maybe I should clarify that question. Are you permitted to bring a watch in from the outside when you come into the Metropolitan Correctional Center, say if you had your own before you were incarcerated?

A No, sir.

Q Mr. Gardner, I believe it is going to be the stipulation of the parties here that you are permitted to spend up to $15 a week or a maximum of $50 a month at commissary.

Is that it?

MR. CORSI: That's correct.

A That's correct.

Q Do you usually spend that amount of money?

A When I have it available, I certainly spend it. You have to realize you spend $4 a week for change generally for the telephones. So that's $16 a month or $20, if there are five Fridays in a month. [256] Those who smoke have that additional expense. If you buy your cigarettes or tobacco and your $4 in change and a jar of coffee and cream, you have spent your $15.

* * * *

[436] A Yes, going in we are given what is called a pat-down search.

Q How about coming out of the visiting room?

A Coming out we are stripped down naked.

Q That's all?

A We are stripped down naked and we have to display our private parts to the guard. They make us bend over and look up our anus.

Q Would you describe the effect of that search on the visit?

A It's not only degrading and humiliating but it seems to break up the whole tranquility of the visit that you just had, the nice head that you walk out of the visiting room with is like a crash.

* * * *

[488] Q Has your room ever been searched?

A Yes.

Q How often?

A Just twice since I have been there.

Q Have you been permitted to observe those searches or not?

A No.

Q Has anything been seized from your room during those searches?

A Yes.

Q Could you describe what items were seized?

A On the first search a tape recorder was [489] confiscated and several tapes that I had made, mostly pertaining to my life story, and that last one was right after the holidays of this year, 1977, and at that time

I had about six neckties in my drawer and they were confiscated and four of them were lost.

Q The tape recorder was subsequently turned over to your wife, wasn't it?

A Yes.

Q What happened to the tapes?

A They were also turned over to my wife.

Q What was the condition of your room after these searches? Was everything put back into place?

MR. SCHAFFER: Objection.

MR. YOUNG: The respondents maintain that everything was put back.

MR. SCHAFFER: The question was what was the condition of the room.

THE COURT: Yes, try to watch that.

Q What was the condition of the room after the search?

A Well, the condition of the room after the first search with the tape recorder was pretty good condition. It just took me a few minutes to put it back together. [490] After the second search things were pretty must just messed up and pushed all over the place.

Q Could you be more specific? Could you describe what was messed up and pushed all over the place?

A Yes, there were legal papers and everything thrown all over the bed because I had them in piles on top of the bed and they were just pushed all over the bed and some of them were on the floor. I guess it took me about a half hour, 45 minutes, I am not sure, to fix the room up.

Q Do you ever keep any food in your room?

A Yes, on occasion I have kept food in my room.

Q Are you permitted to receive food packages from outside?

A No, sir.

Q Have you ever been criticized or been told by unit staff members that you are not supposed to keep food in your room?

A Yes, I was.

* * * *

[527] Q Miss Braunig, are you subjected to any type of search incident to attorney visits?

A Yes. I am subject, I have been subjected to a strip search which is very degrading.

Q Is this before or after the visit?

A After the visit.

Q Would you describe the nature of that strip search?

A We are required to take all of our clothing off, to squat, to expose. It's very, it's very embarassing.

Q When you visit with an attorney on the third floor are you also subjected to such a search?

A Yes.

Q Who conducts that search?

A It's different every time. * * *

* * * *

[608] BY MR. YOUNG:

Q Miss Braunig, has your room ever been searched [609] when you were at the Metropolitan Correctional Center?

A Yes, it has.

Q On approximately how many occasions?

A Four or five that I can think of off the top of my head.

Q Could you describe, first of all—I withdraw that. Was anything seized during any of the searches?

A Yes.

Q Would you describe the items that were seized?

A Jumpsuit, my second blanket, linen. That's about it.

THE COURT: What was that last item?

THE WITNESS: Linen.

Q What was the condition of your room after it was searched?

A Dissheveled, things were strewn all over, every place, especially my legal papers. It took me a week to refile them.

Q Have you been advised recently by the MCC staff that there are going to be more searches?

A Yes, I have.

Q Would you describe the nature of that ad- [610] vice?

A There is a memorandum on the board to that effect, requesting by the lieutenant of the officers.

Q Miss Braunig, it's been stipulated that inmates at MCC are not permitted to receive food packages or personal effects except for a food package at the holidays. Would you describe the effect of not being able to receive such packages?

A Well—

Q Were you able to receive such packages at other institutions?

A Yes. At Alderson I was able to. Michael's mother was able to send me a bathrobe and slippers. I was able to receive music, things like that, to play.

* * * *

[737] Q Would you agree that you are representing a carton approximately two feet by two feet by two feet?

A I couldn't begin to tell you. I have absolutely no depth perception.

THE COURT: Why don't counsel stipulate on that?

MR. YOUNG: We will stipulate that.

THE COURT: You think it is about two feet?

MR. YOUNG: Well, the measurements she was showing with her hands are about two feet.

THE COURT: Okay. Go ahead.

Q And did I understand correctly, Miss Braunig, that you testified that after one room search it took you a week to refile those pape s?

A Yes. The contents of four separate boxes were strewn.

Now, I had—

Q Just answer the question.

A Yes, it took me approximately a week to refile everything. That envelope was taken—

Q Mr. Gardner had eight boxes in his room?

A I believe so.

* * * *

[815] Q I would like you to assume that after each visit an inmate at the MCC is brought into a room connecting the visiting room with the modular unit and is there asked to remove all his clothing where he is searched by a prison guard. The search requires the inmate to expose his mouth and turn over and spread his rectum for visual inspection by the guard.

Do you have an opinion as to whether or not—those searches I would like you to assume are conducted as a matter of routine after each visit.

Do you have an opinion whether or not such searches are necessary?

A This is another one of Correction's undying traditions. In all the years that I have been in the prison business, I have never yet heard of any contraband being found in the anus of any prisoner and yet day after day after day they reduce prisoners to that indignity.

[816] How one could even hope to inject any such thing into such crevices when he is wearing those monkey suits is beyond my comprehension. It's a residual thing, and has been aroun every since I can remember.

I have asked dozens of Wardens, have you ever found anything?

No, never found anything.

Why do you do it?

We have been doing it for years. And, that's it.

I believe with the electronic equipment we have now—the only thing you have to worry about in terms of introduction of contraband into an institution is narcotics, and money. The electronic equipment or the airport-type equipment we have at the front door can, if done with any kind of viligance, will avoid the other introduction, weapons and saw blades and that sort of thing. So we have to worry a little bit about narcotics and such-and-such.

But, I think the kind of indignities I have just described to prevent the introduction of, say, narcotics into place, and they can come in a variety of ways if they are brought in at all, just doesn't justify continuously reducing a human being to a less [817] than human quality.

Q Do you recall how many people were present in the visiting room having visits yesterday when you were there?

A I sat on the fifth floor yesterday. The last time I was on some other floors. The fifth floor on the women's side there were couples, not crowded at all. On the men's side there were 26 people. That counted me and my associate. Obviously there were 24 people engaged in the visiting. It was very crowded in there during that period.

Q Do you have an opinion whether or not the room is adequate for that amount of people?

A 24 would be an absolute maximum and it could be reduced I say if they increased the hours of visiting. You didn't have much sense of privacy. You were almost on top of everybody.

Q Generally, could you describe what the importance of visiting is for a population such as that at the MCC?

A It's the one thing that keep them normal. It's the one thing that keeps them related to a real world. It's the one thing which is the sum and substance of what they live for.

* * * *

[899] Q I would like you to assume, doctor, that rooms at the MCC and other living spaces at the MCC are searched periodically by guards who search detainees' properties, and may confiscate items, but inmates of the MCC are not allowed to see such searches. Do you have an opinion as to this practice on the mental well being of the inmates of the MCC?

A Yes. The relationship between inmates and staff in most prisons is one of mutual distrust, [900] and tend to be of an adversary nature rather than one in which there is some kind of alliance and cooperation toward a common goal. And as a result of that suspiciousness and distrustfulness, not only of inmates for staff but of staff for inmates is very intense.

My opinion is anything which aggravates that kind of relationship between staff and inmate is harmful to the inmate and harmful to the goals of the administration and institution because it makes it more difficult

for them I think. This search is one of many ways in which this kind of staff relationship and attitude of inmate is aggravated. If his personal living space is going to be searched and he is not allowed to be there to see what happens, the kind of characteristic paranoid suspicion he is thinking is focused on that and inmates describe their fears about the loss of what to them are very valuable personal possessions, which may be nothing more than photographs of family or friends, but many of them are confiscated during the searches, and also the fact that they can't see. The fear the staff is going to plant something there and then charge them with having contraband and they would have no way to say anything [901] about that was expressed.

The most harmful effect of that procedure is to aggravate the mutually distrustful relationship between inmates and the staff.

Q What is the importance of personal property to a person in an institution such as the MCC?

A Well, in the MCC and in most other prisons the personal property allowed is severely limited. Many items are declared contraband which are just, in my opinion anyway, ordinary and not dangerous items, not only in the prison but items that the men might be used to having on the outside. So the few things he is allowed to have assume extraordinary importance and they tend to be often such items as toiletries, for example, which in most prisons are really very limited so that if a man has soap, deordorant and that sort of thing it is very important to him. And photographs in particular assume great importance because they become a link with the person or persons from whom the man is separated by the imprisonment. Because of that effect it assumes extraordinary importance. To lose that is a great loss, although to us it might not seem so.

* * * *

[909] Q Doctor, I would like you to assume that there are no vending machines in many of the visiting rooms at the MCC, nor are visitors or inmates allowed to bring food with them into the visiting room.

I would like you also to assume that the washrooms, the rest rooms, which are present in each visiting room are locked and may not be used by inmates or the visitors or the children.

Do you have an opinion as to what effect, if any, these factors have upon visits at the MCC?

A Well, that almost seems designed to make people miserable, to not have such elemental, again, requirements as toilet facilities and drinking water, at least. And also I'm sure that it has the effect of discouraging visits. It must be very difficult for a family with small children, for example, to remain for any length of time without a bathroom and some sort of drink.

I can't say that the food is essential, but it certainly would make a much more, I think, pleasant visiting situation in many respects.

Q I would like you to assume that after each visit inmates, whether male or female, are escorted into an area which connects the visiting room [910] to the modular unit and there they are asked to remove all their clothing for a search by a correction officer. That search requires the inmate to expose the palms of his hands and his feet, to open his mouth for visual inspection, and requires the inmate, in addition, to turn around, bend over and expose his rectal area for visual inspection by the guard.

Assuming that to be the procedure after each visit, do you have an opinion as to what, if any, is the psychological effect of that search procedure?

A Yes. It probably puts the inmate into the most humiliating kind of situation which is possible. It also, I think, leads to the aggravation of this adversary relationship which I described between the prison administration and staff and the inmates. And there are a number of aspects to this.

Not only being stripped naked, which is embarrassing to most, again, people in our culture, but the requirement of having to bend over and expose one's rectum, or anus, is particularly objectionable and humiliating to particularly men in this culture and in the prison setting, and there are some specific reasons for that.

Part of the inmate-staff relationship has [911] to do with domination and submission, the staff obviously dominating, and the requirement being that the inmate submit. This is just in general.

There becomes injected into that in many cases, just because human beings are the way they are, a kind of sadistic component on the part of the staff which does not necessarily imply physical mistreatment or injury inflicted but a kind of psychological sadism. And I've seen this procedure done many times in many prisons, and it has been almost without exception done in a way which I felt was excessively and unnecessarily psychologically cruel, in terms of taunts and jokes and remarks which put the inmate in, again, an extremely humiliated position, put him down, impressed upon him the fact that he was under control and he had to do exactly what he was told. That is another part of it.

Another aspect of it, again especially in prisons, is the whole atmosphere regarding homosexuality, which is all tied into this whole attitude and condition of domination and submission, sadism and masochism, and is of obvious concern in every prison. And from that point of view the position of having to bend over and expose one's rectum for a man is the most [912] vulnerable, and many inmates will specifically say that they have a fear of sexual assault in that kind of situation, where they are helpless and exposed.

I am not saying that it happens or that it doesn't happen often. I don't know. But the feeling is there, and I think it has an overall very detrimental effect not only upon the inmate but upon eventually the operation of the institution, because it again is a factor in aggravating this kind of relationship between the staff and the inmates. I think it just makes the job more difficult.

Beyond that I will say, as a doctor, that it just doesn't make sense to me, in terms of the fact that it be almost impossible to conceal anything of any bulk between the buttocks and not have it obvious to everybody, in terms of the way one would have to walk and carry one's self, and also to insert something into the rectum is difficult, painful, would require time and opportunity

which is not available in the visiting areas, and the search wouldn't find it anyway.

Q Why is that, doctor?

A If an object is inside the rectum, it has been passed through the anal sphinter, which holds [913] the rectal cavity closed, and there is no way that one can get inside there by simply having a person bend over and spread his buttocks. It requires an instrument to open that muscle.

* * * *

[979] That isn't what you asked me in this case.

Q I thought I used the word "reasonable." Are you distinguishing—

A Reasonable requires some kind of standard. Fairness I think is a more generally applicable quality.

Q If the practices that you have been testifying about were fair and rational and were perceived as such by the inmates, then it would be your opinion it would ameliorate the negative psychological effects?

A Generally, yes.

Q Dr. Rundle, you testified as to the general problem of distrust between inmates and staff and of an adversary relationship between them. What evidence of that did you see at the MCC.?

A I can't speak specifically of anything at MCC except a general impression which I gained in talking with a number of inmates and it had to do with several specifics. For example, request for medical attention, which according to the inmates' view went unanswered, and in more than one case their interpretation, to mean that the officer or person responsible on the floor deliberately destroyed the requests. But much of that is really based upon an [980] opinion which I hold from general knowledge of prisons, not specifically this one.

Q With respect to the procedures followed in searches of rooms, you testified as to fear of inmates that valuable personal possessions would be taken, such as photographs of members of their family or loved ones.

Are you aware of any evidence that any such property has ever been seized at the MCC?

A No, I'm not.

Q Did any of the inmates with whom you spoke at the MCC voice that particular fear to you?

A I think not.

Q Doctor Rundle, when you made your tours and had these interviews with inmates, how did you pick which inmates to talk to? Did you choose them at random or were their names given to you by someone?

A Well, on the tours in casual contacts, whatever happened. Some of them might have approached me or I might have approached them to ask a question. In the more detailed and longer interviews it was my own wish to interview inmates from specific areas and who met certain conditions. That is, someone in the dormitory who had been there perhaps a long time, some- * * *

* * * *

[992] A Well, I think I explained that in this culture, with men at least, that having to bend over in that particular position creates a feeling of extreme vulnerability and embarrassment and humiliation. There is a certain degree of embarrassment, perhaps, and humiliation involved in having to strip naked in front of one's keeper and show himself in that manner. But it is not as extreme as if he is forced to assume this position.

Q In your tours of the MCC, did you ever see any evidence of guards making snide or derogatory comments during a strip search?

A No.

Q Did you see any strip searches?

A No.

Q Did any inmates tell you that they had experienced any such snide remarks by a staff member of the MCC?

A No.

* * * *

[994] Q You testified in connection with strip searches that there is a fear of sexual assault by an inmate who is forced to bend over and expose his rectum. Are you aware of any evidence of such sexual assault at the MCC?

A No, I'm not.

Q Did any of the inmates you interviewed state to you theri fear of such sexual assaults at the MCC?

A Specifically there, I think not.

Q Dr. Rundle, in your testimony in the Queens House of Detention case you held up the MCC visiting room as something of a model in comparison to the visiting facilities at the Queens House of Detention, did you not?

A Yes, I did.

Q And on that occasion you did not express any reservations concerning the lack of access by visitors to the units or private rooms, did you?

A No, I didn't. But I think that should be taken in the context of the conditions at the Queens House, for example, where visiting was in a situation in which the visitor was closed in a very small, steel and glass or plastic closet and the inmate was on the other side of a plastic or glass partition and communication was through a telephone.

* * * *

[1069] A Yes, I have.

Q Would you describe the types of books on those shelves?

A We have cookbooks. We have a couple of education books. We have adventure books.

We have fiction novel books. We have some—and we have a few bibles and a couple of religious books.

Q Have you observed that shelf on a daily basis since you arrived at MCC this most recent time?

A Well, I generally don't go there to read aby books because I know approximately what's available and nothing to my liking. I have noticed at times that they have changed the books because when they change the books there seems to be a mob around the books for the next couple of days to look and see what books are available, if there is something worth reading there.

The same amount of times that they have brought up magazines, the few times that they have. So I did the other day out of curiosity scan the books and magazines that were available.

Q You stated you have had an opportunity to observe the times that they have changed the books on

those shelves. Have they changed those books since you returned on February 2?

[1070] A No, they have not.

Q Have you stated that you also examined the magazine. Did you at my request prepare a list of the dates of those magazines?

A Yes, I did.

Q I'm going to show you Petitioners' Exhibit 119 for identification and ask you if this is a list that you prepared?

MR. CORSI: Your Honor, I'm going to object. First of all I think he should put questions to Mr. Miller as to what his memory, what he can tell us from memory.

THE COURT: No, I don't want to go through that.

Q Is that the list that you prepared?

A Yes, that is the list.

Q Is it accurate to the best of your recollection?

A I handed it personally to Mr. Whitehead and I asked—he was the, he was the unit officer on duty at that time. And I asked him if he wished to check it to see if, if the list was valid or not. And—

Q Did he?

A He looked at the list but he didn't take the time to check it, no.

[1071] THE COURT: Is it dated?

THE WITNESS: Yes, it is, your Honor.

BY MR. YOUNG:

Q When is it dated?

A It's dated March 8, 1977.

MR. CORSI: Your Honor, I note that this exhibit doesn't list the names of magazines. It's just dates and the number of magazines.

MR. YOUNG: I believe Mr. Miller testified that that is what he put on the list. I'm going to introduce this into evidence.

MR. CORSI: No objection.

(Petitioners' Exhibit 119 was received in evidence.)

Q Mr. Miller, are newspapers sold on your floor?

A Yes, they are.

Q Have you always been able to purchase a newspaper when you wanted one?

A To a large percent of the time, yes.

Q Have you ever observed other inmates who were unable to purchase a newspaper?

A Yes, I have.

Q Would you describe that?

A For a while they had, the individual that was [1072] bringing the papers up to the unit would go to certain individuals and they would get their paper first.

And then if there was any left for these other people we would then be able to purchase them if they were available. I have complained to the people that they should bring up more newspapers and he said that they didn't want to order too many and that it was just possible that when they came to our floor we were the last floor that they came to.

* * * *

[1078] Q Would you describe the last occasion that your room was searched?

A The last time my room was searched was when I was housed on 11 North in Room E-1134. It was some time dur ng the end of the summer, possibly during early fall.

Q Would you describe the sequence of events relating to that search?

A Well, in the late morning hours we were all locked in our rooms. We weren't told why that I can remember. They might have said that they were going to make a count of something but they didn't say it was for a search.

Anyhow, we were locked in our rooms and, and then a contingent of officers came up and worked in groups of three and went to each individual room, unlocked his door, took him out and had him strip out in the hall in view of all the other inmates that were locked in their rooms. And we stood out there and the other two officers went into our room and searched it.

Q Were you permitted to observe that search?

A No, we weren't permitted to observe it.

[1079] Q Were any items seized from your room during that search?

A Yes, there was.

Q Would you describe what those items are?

A The items that were taken from my room that I know of, I had a can opener taken from my room, some envelopes, some pens. I had a thermos. That's all I can think of.

Q Were any items of clothing taken from your room?

A Yes, I had, I did have some, some underwear stolen. I believe socks or undershirts. I'm kind of vague on exactly what was taken.

I know the shorts were taken. That's all I could think of as far as the clothing.

Q Were any of these items returned after the search?

A No.

Q Will you describe the condition of your room after the search?

A The papers that I had on my desk were all disoriented as were the papers that were in the desk. I had to remake my bed and I had a box on my floor in the corner of the room that, where I was going back to the [1080] State. I had put whatever I was going to bring back to the State with me in this box.

I had it all neatly packed in there and I had to repack that whole box.

Q Mr. Miller, it's been stipulated between the parties that inmates at the Metropolitan Correctional Center are not permitted to receive food packages or packages of personal effects.

Would you describe the effect on you of not being able to receive such packages?

A Well, I'm a State prisoner and as such we are entitled to receive a 35-pound package a month exclusive of clothes and magazines.

Q You mean when you're in a State institution?

A Yes. I believe that if we could have books and magazines sent in and foods other than what we give us at the Metropolitan Correctional Center and other than what we do receive in the commissary that we might receive food that we would not only enjoy but food that woulod be nutritional, as many of the things that are

offered in the commissary are cookies and candies and things like that.

For the packages that we are allowed to receive at the Metropolitan Correctional Center I believe that they, [1081] that the package this last time for Christmas was 15 pounds. Whereas I believe the one year prior to that was only 10 pounds, but the items that you are allowed to receive in the package were not that of clothing or magazines and books but that of candy, cookies, and junk foods.

I mean most of the stuff that we could buy in our own commissary if we could have was the same thing we could have got in the package with the exception of cheeses. They did allow us to bring in cheeses and meats if the meats were properly wrapped.

Q Mr. Miller, would you describe conditions relating to the commissary at the Metropolitan Correctional Center?

A Excuse me?

Q The conditions relating to the commissary and your experience with it?

A Right now the present list, the present commissary list there are at least 21 or 27, somewheres around there items that are not properly priced. We've had price changes and these items are not properly priced now. An individual can spend up to $15 a week with a limit of $50. * * *

* * * *

[1100] GLENN MILLER resumed.

DIRECT EXAMINATION CONTINUED

BY MR. YOUNG:

Q Mr. Miller, are you subjected to any type of search incident to visits?

A Yes, we are.

Q Would you describe that search?

THE COURT: Mr. Young, do we have to go over everything more than once, especially things that are not disputed?

MR. YOUNG: Then we will withdraw that question.

Q Would you describe the effect of that search on you?

A The one going into the visiting room isn't as bad as the one comming out of the visiting room because the latter is more thorough. I have had problems coming from the visiting room on a could of different occasions. The worst—

Q Would you describe those problems?

A The worst one in particular was I was threatened by Officer Drew on one occasion in front [1101] of Officer Harry Marshall because when I came out of the visiting room I told them that it was my belief that in a case of Martin Sorsry vs. New York State, or something, he was subjected to anal searches, and I told them that I didn't think that it was legal, and therefore I didn't see where it was necessary for me to submit to such search. And, well, I had told this to the officer when I came out of the visiting room, so he then called the lieutenant on the telephone and the Lieutenant Drew subsequently came to the visiting room and took his radio, whatever they call them, walkie-talkies or something, slammed it down on the desk and turned around and told me that—to—to strip, and I did, and I went through the whole procedure.

And he asked me what the reason was that I didn't do it in the first place and I told him what my reason was. And he told me that the next time he has to come to our floor and I refuse to submit to such search that he was going to put his foot up my rear, in other terms, but that's essentially what he said.

Q If you can recall exactly what he said then don't be embarrassed, please say it.

[1102] A He told me he is going to put his foot up my ass. And Officer Marshall was there and heard the conversation.

That was the worst experience I had coming from there.

I had an experience going in where the officer wanted to go through the same procedure and I told him to call the unit manager, that I thought it was unnecessary to

be strip searched going into the visiting room, and Mr. Rivera came down and told the officer that it really wasn't necessary, but the officer that was on duty then was a new officer anyway.

Q Do you happen to recall that officer's name?

A Yes, his name was Mr. Davis.

Q Any other effects of those searches on you?

A I really feel they are unnecessary. I mentioned it to different officers that I couldn't see the reason for such a search coming out of the visiting room because with the search that they conduct when we go into the visiting room in which they pat the individual down, we don't wear many clothes anyway. I told them that it would be impossible, I had told [1103] many officers that it would be impossible for us to smuggle in guns or anything like that.

I mean if we have it on our person I'm certain they are going to be able to feel it without having to degrade us by taking off all our clothes and going through the type of searches that we are subjected to.

Q Mr. Miller, during the times that you have been at the Metropolitan Correctional Center have you ever had a key to your room?

A Yes, I have had a key to my room.

Q When was that?

A That was when we were on the seventh floor, where we were all issued keys so that if we went into the room for—if we left our rooms we could then lock the doors so that we wouldn't have anybody else going into our rooms or stealing anything or what have you.

Q During what time period was that?

A This was prior to and including the middle of March, 1976.

Q Do you presently have a key to your room?

A No, we do not have keys to our room at this time.

* * * *

[1162] Q Are you always strip searched incident to a visit?

A I am patted down when I go out to the visiting room and most of the time I'm not strip searched when I come back.

Q What about when you leave the visiting room? Are you strip searched on every occasion then?

A That's what I mean. No, most of the time I am not.

Q You are not strip searched?

A No.

Q What do they do when they leave the visiting room?

A Most of the time again there are exceptions where nothing happens at all. Most of the time I am just patted down.

Q Has any guard ever indicated to you or do you have any knowledge as to why you're not strip searched?

A I would assume on account of my condition.

* * * *

[1210] MR. YOUNG: All right. I would offer Petitioners' Exhibit 134 into evidence at this time your Honor.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 134 was received in evidence.)

Q Dr. Seiller, you testified that you can order coins for use in the phones and to purchase newspapers from the commissary, is that correct?

A Yes, within the $50 spending limit.

Q Do you normally spend the total amount that you are permitted to spend in any given week?

A I think your question would lead to a misunderstanding. You have a spending limit of $50 a month. There is actually, the maximum you can spend out of this $50 is $15 a week. In other words, you can actually buy only about three weeks and the last week you don't have much money left. I spent the money within my limits, but sometimes it happens I ordere for $15, not knowing correct prices, I may be over, I may be under, but I spent my $50 during the month.

* * * *

[1212] Q Any other things that you can think of that aren't available at MCC?

A There is no comparison qetween the state commissary list and this one. You cannot ocmpare the two. It's a complete different thing. It simply is completely different, the commissary itself.

Q How is that different?

A I can only talk about the State of New York because I was working there. State purchases are centralized. Various institutions draw on a central contract. The prices are certainly relatively low and they don't need high stocks because they can immediate delivery of items throughout. Here we have frequently items are sold out and they are not replaced for two, three weeks. And then the offer is—more items are offered.

Q All right, Dr. Seiller, it's been stipulated between the parties that persons cconfined at the Metropolitan Correctional Center can only receive food packages on Christmas and I believe religious holidays, certain items can be received from outside. Would you describe the effect on you of not being able to receive such packages?

A I think it's—first thing, the receipt of [1213] packages is not so much of receiving items. I think it is more or less a symbolic affair. Someboy who sends you a package has to think about you, he has established some sort of relationship, which for me is more important than the items in the package. But I certainly would like to have certain items, like vitamin tablets or other things I cannot buy from the outside.

Also, I think it would have a positive effect on the commissary because right now I have no means of comparing prices but I think some of the things are rather high in price.

MR. SHAFFER: Objection.

Q On what do you base that?

THE COURT: All right. Well, I don't think it amounts to anything, although I think I will receive it for his impression of the situation, not as proof that the prices are high.

Q Dr. Seiller, prior to your incarceration did you use an electric shaver?

A Yes.

Q And did you use one in the state prison?

A Yes.

Q Were you permitted to possess your own [1214] electric shaver in the state prison?

A You were actually encouraged to have electric shavers because they did not want razor blades around there.

Q I think the parties will stipulate that you are not permitted to have electric shavers at MCC.

Dr. Seiller, are you permitted to have a typewriter in the state prisons?

A Yes.

Q Did you have your own typewriter when you were in the state prison?

A Yes.

Q Were you permitted to have your own stationery in the state prisons?

A You could have stationery with only your name on it. For using the address, you had to use the address of the prison without mentioning it was a prison.

* * * *

[1509] Q Other than the problem of not gaining a chance to supervise the clean-up because of visiting, were there any other problems that were created by the fact that you were the only officer in charge of 120 men?

A Yes. It was sort of hard to walk back out into the unit and answer the questions or help them with the problem at that particular time because of trying to find other inmates for visits or checking the locator to see where they were if they didn't answer when you yelled out at the top of your voice for a certain name has a visit. It was a problem, yes.

Q All right. Officer Norman, as one of your functions concerning visits, were you responsible for conducting strip searches of inmates?

A Yes. There again I didn't—

MR. SCHAFFER: Objection, your Honor.

THE COURT: The answer is just yes, officer.

Go ahead. Next question.

Q Did you always conduct a visual rectal search [1510] as part of that strip search?

A Coming out, if I suspected something, I would. But normally I would allow them the dignity of not resorting to that on all occasions.

Q All right. On the occasions that you did conduct a visual rectal search, taking all the times that you conducted a visual rectal search while you have been employed at MCC, have you ever discovered any contraband hidden in that area of the body?

A Never.

* * * *

[1517] Q Officer Norman, has one of your responsibilities as a member of the MCC staff been to conduct periodic room searches?

A Yes.

Q And when you have conducted such a search, has the inmate been permitted to observe the search?

A No.

Q Have you always returned the rooms that you [1518] searched to the condition that they were in before the search?

A I always try to.

Q Have you observed whether other officers have done likewise?

A Yes.

Q Do they return the rooms to—

A Not all of them. A lot of the officers do try to put it back into shape, not all of them.

Q What about the ones who do not? What condition do they leave the rooms in?

A Well, the room looks very disrupted once they get through with the search.

Q In what fashion?

A Leaving personal property and bedding scattered over the room.

Q Have you observed a superior or a lieutenant instruct these individuals to return the room to their original condition?

A No.

Q Officer Norman, in the course of your responsibilities at MCC, have you ever observed inmates attempt to bring coins in from the visiting room?

A Yes.

* * * *

[1673] Q Now I'd like you to assume, Dr. Fogel, that when searches were done of the inmates' rooms at the MCC it is a practice in the Metropolitan Correctional Center not to allow inmates to observe those searches.

Do you have an opinion as to whether or not that is a suitable correctional practice?

A Unless the person is out of control at that moment I would, I would let him observe. I don't think it's suitable not to. I mean I think he should observe what is being searched in his room.

Q Why do you say that?

[1674] A Well, I think, you know, we're the agents of law and we convey the meaning of the sanctity of private property. You don't go rampaging through. You collect what you believe is contraband. You inventory it, make an inventory of it, and give a receipt for it. That's how you would convey lawful behavior.

Q What's the effect upon the inmate if you don't allow them to watch the search?

MR. CORSI: Objection, your Honor.

THE COURT: Sustained.

* * * *

[1751] Q What is your opinion?

A That an inmate should be allowed to observe or be in very close vicinity to his room when his room is being searched. Too often correctional officers will search the room of an inmate and the inmate will state that the correctional officers placed some contraband in there. They produce the contraband or the inmate will claim that he had some article inside of his room which was not contraband which the correctional officers stole or the inmate will claim that the correctional officers came into his room and purposely broke some pieces of furniture.

By having the inmate close to his room the inmate is accountable for what the correctional officers find in there immediately.

Correctional officers can question the inmate on any question they have concerning what the contents of his room are and it doesn't allow for that kind of situation which I described to happen.

Q Have you formed an opinion as to whether having an inmate observe searches of his room would create a security risk?

A Yes.

Q What is your opinion on that?

[1752] A It doesn't create a security risk.

Q On what do you base that opinion?

A Let me say it is less of a security risk than not having the inmate present. If the inmate were not there, you are creating an opportunity for all kinds of repercussions. Having the inmate and having two correctional officers go into the room does not produce an infraction of security. It rather contains the search and prevents it from being a huge incident.

Inevitably in a prison the inmate will get word sooner or later, not from the correctional officers that his room is being searched, but from other inmates. That inmate then becomes paranoid and figures out some way to get back to the room or immediately begins to suspect what could be going on inside during that search, and creates an unnecessary suspicion. It could be a self-contained search.

* * * *

[1885] Q What, if any, steps have been taken by the MCC to reduce the population at MCC?

A Well, we have examined several possibilities and alternatives to reduce the population ever since we first began to note that it was rising above our capacity.

One of the things that we did, Lewisburg Penitentiary in Pennsylvania used to run a bus service through the MCC and it used to come in about three or four times a month. We converted that bus so it no longer held those prisoners as holdovers at our institution and had them

run directly instead to places like Petersburg, Danbury and other facilities. They now come in once a month.

In addition to that, in May or April of '76 we acquired—petitioned the Central Office for a bus and acquired our own bus so that we can move as [1886] expeditiously as possible people out of the center. That bus was an older bus, it had 22 seats, and around December of '76 we received another bus that has 27 seats, giving us even more capacity to move people.

In addition to that, we increased our space at the Community Treatment Center from about 145 to 160. We have contracted with other private halfway houses in the area to give us additional bed space in community programs. We made arrangements, working through the judges in the Southern and Eastern Districts of New York, and were able to transfer weekenders, people serving their sentence on weekends, to halfway houses, with the exception of about two cases.

We also reorganized our administrative systems section of the institution, which deals with receiving and discharge, bus transportation and so forth, for greater efficiency and determining when a judgment of commitment is received.

I recruited and hired a man who was a U.S. marshal for Baltimore to work in the marshal's service in trying to expedite the handling judgment and commitment papers from the courts, and so forth, so that we can move people just as rapidly as possible.

All these things have been done in an [1887] effort to try to keep population within a reasonable limit.

Q With respect to the MCC bus, how often does that bus make runs from the MCC?

A We have regular runs about three times a week, depending on which week we are operating in. But we also have blanket permission from the Central Office to run whenever necessary. So we have often run more than three times a week. We sometimes run as much as five times a week.

* * * *

[1947] Q What is the MCC policy concerning room searches?

A Well, each—each employee, correctional officer, unit manager, counselor, all employees are required to do periodic searches and to monitor for contraband and for any other kind of security breach that could jeopardize the safety of the institution and the staff and inmates.

We, each correctional officer on the unit, must search a certain number of rooms a week. That's part of his responsibility. I don't think they necessarily mind if the inmate is there, but he doesn't have to be there when the room is searched.

Q With respect to these searches are inmates permitted to watch them?

A Under those circumstances where an individual search of the room is being done an inmate can stand and watch as long as he stays outside of the room. Under a more structured search of rooms, and we do have [1948] a unit that goes through certain segments of the institution on a weekly basis, they cordon off the area, and go through all the rooms. Under those circumstances no inmates are allowed inside that cordoned-off area and the reason for that is to prevent inmates from distracting officers who are doing the searching and moving contraband from one area to another ahead of the search.

Q Are there other reasons for cordoning off the area?

A The other consideration is that during searches there sometimes arises a situation in which the inmates become argumentative and conflicts do develop between staff and inmates over the search. I might point out though that staff are instructed to leave the room as they found it and they are provided with training during their on-the-job training during their initial assignment with the Bureau of Prisons and their probationary year, ongoing reminders about the way rooms ought to be searched, through our regional training centers.

I think it is important to preserve as much as possible the privacy and respect the privacy of the inmate.

[1949] Q It has been stipulated that inmates are not permitted to receive food packages except on special occasions, particularly the holiday season. What is the rationale for this policy?

A Well, inmates are not allowed to receive food packages again, because of the possibility of concealing contraband, drugs and even weapons. Food items that come into the institution, especially if they come directly from the family.

The other problem associated with allowing food into the institution has to do with the amount of staff time necessary to inspect it, No. 1; and, No. 2, sanitation, storage problems, the result of having a large amount of food around.

Q Are the problems concerned with theft or fights?

A That's another consideration, that there is a person who may not have a family or friends to bring food in and other individuals do, and I might add that that's a consideration of personal property in all kinds of things that are available to inmates that we try to narrow the gap between the haves and the have nots to avoid conflicts, the possibility of using personal property and food items and so forth for buying favors [1950] and gambling and strong-arming and other kinds of activities that have been written about in books for years and have always caused correctional administrators problems.

MR. YOUNG: Your Honor, we're trying to avoid objecting as much as possible, and give respondents wide latitude, but questions like the ones that Mr. Corsi just asked are very leading. I just request that—

THE COURT: I didn't think it was very leading at all.

MR. YOUNG: He asked about fights and then the answer came back, yes, there are fights.

Q With respect to the limits on personal property what is the rationale for that property?

A Mr. Corsi, some of the same rationale applies again, it widens the gap between the very influential kind of people and we have a number of people who are very influential in our custody and they would be able to buy nice-looking clothes and nice-looking personal items and so forth and the people who do not have those

items would not be able to purchase those, and again creates conflicts and problems and fights and theft, and also again creates storage problems and so * * *

[1951] As far as clothes are concerned I think especially in an institution such as we operate, where there is such a rapid turnover, if we allow inmates to wear their own personal clothes, identifying them as inmates would become extremely more difficult and it is just one other area of prevention in terms of preventing an escape that would be taken away from us. By that I mean that a uniform readily sets him apart, sets him aside. If he is going to escape he had to get rid of that uniform and somebody has to bring him in some civilian clothes, which makes it just that much more difficult to escape. So the personal clothes, in addition to being storaged and theft and contraband problems, and also the escape problem, are a security problem.

Q What is the rationale behind the $50 limitation per month for inmate spending at the MCC commissary?

A The same rationale again is used that there are some inmates who have a great deal of money and others who don't. And if you are allowed to spend any amount of money in commissary, you could then purchase commissary items that could be traded * * *

* * *

[2271] Q Would you describe the procedure by which paperbacks are brought into the MCC and distributed to the floors?

A Well, insofar as it comes under my auspices, we have a contact with Hudson County newspapers, I forget what the name of the company is, Hudson County, Hudson County News—that's what it is—and it's in Jersey City. And every, say, month or six weeks we go out there and pick up stripped paperbacks, which is simply a process where the publisher or the distributor, rather, strips the covers off the paperback books and declares them ready to be thrown out, and agencies such as prisons and hospitals go out and pick up books under those circumstances.

Q Approximately how many books do you pick up?

A Sometimes 3000, 4000, sometimes 2000, 1500, depending on what they have got available at the time.

We are really at their mercy, so to speak.

[2272] Q And after these books are picked up, what do you do with them?

A Lay them all out over the floor of the library and any rooms that are available, the hallway and whatever, in piles of—set up to indicate what is duplicated and what is not duplicated, and then we bring them up to the units and switch as many books as possible—there are leftovers from previous distributions—and try and continually refurbish the racks of the paperbacks up there.

We don't control them in any way. We encourage people to keep them.

Q Do you also have responsibilities with respect to the introduction of magazines other than those that inmates themselves order, subscribe to or have brought in by friends?

A Yes. We get them from the General Post Office on 33rd Street and do that every two or three weeks, depending on if I have the time or if the Post Office has enough magazines. We call before we go.

It is like the Dead Letter Area, and they have bags of magazines that they assign to the many agencies in the city that go and pick up whatever magazines are available to be picked up at the time.

[2273] And we are, again, at their mercy to the extent of magazines that are available or whatever. We usually get a minimum of five bags. But in our building, the way it is, five bags isn't a whole lot. The place is like a sponge.

There are 13 places where magazines have to go when they get distributed, and what happens is we just break them into piles and try and provide as little duplication as possible, and whatever we've got we give out.

Q What about newspapers? What are your responsibilities with respect to newspaper distribution and sales?

A We sell them: daily New York Times, daily Daily News, daily El Diario, and the weekly Amsterdam News. They are sold through us.

We also handle the Sunday Daily News and the Sunday Times and the Saturday El Diario, which is the same as the Sunday paper.

Q And how are these distributed among the floors?

A An inmate goes around and sells them, face value.

Q Does he start in one particular floor each [2274] day and proceed in a certain manner on each day?

A Well, he starts on the 11th floor on one day and on the 3rd on the next, and it reverses each day.

Q Are you also in charge of the general library?

A Yes.

Q Did there come a time when an inventory was taken and a list of books printed up?

A Yes.

Q When was that?

A Late January it was all completed, mid-January.

Q 1977?

A Yes.

Q And what did you do with that list after it was completed?

A Ran it off on a Rexograph machine and issued one to each bulletin board on the units and one to each unit manager.

Q If an individual wishes to borrow a book from the general library, what is the procedure for doing so?

A The unit officers have general library cop-outs which are simply request forms with spaces in them indicating what they want, and they put them in the envelope on the Bulletin marked Law Library, and the * * *

* * * *

[2372] Q It is further stipulated that after a visit, a strip search is conducted of inmates. Do you have an opinion as to whether the use of strip searches after visits is in conformity with accepted correctional [2373] practice. It is if, one, the visits are contact visits, I mean where there is direct contact between the visitor and the detainee or inmate, and also if it is done in private as opposed to in front of everybody, and also taking into consideration the fact that you have people in a facility, whether it is this one or another one, that

might wish to introduce contraband, if you have people that are involved in narcotics or serious offenses that might want to introduce something to aid them in the escape.

I think it is a precaution that needs to be taken.

Q Dr. Camp—

THE COURT: Do you include in a strip search an anal inspection and inspection of the genitals? Was that embraced within your answer?

THE WITNESS: Well, I'll try to phrase it diplomatically.

THE COURT: No. I can listen to everything. It is all right.

THE WITNESS: A visual as opposed to any other type, just a visual inspection.

THE COURT: And it is your expert judgment that that is necessary following contact visits in [2374] guarded visiting rooms?

THE WITNESS: Yes, because, your Honor, I don't think it is possible to watch every single person that closely so that contraband could not be passed.

THE COURT: Is it your experience that a fully-dressed inmate in a visiting room could feasibly or with any frequency secrete contraband in the recum or something like that?

THE WITNESS: Absolutely. I know of cases where it has happened. It does not stop, your Honor, and would not stop somebody swallowing something, whether it passed in a balloon and swallowed something in a balloon and then passing it later, when they get back in the unit.

THE COURT: What kind of search would you recommend ror that?

THE WITNESS: I don't think there is a search. I think that's where observation needs to be as good as possible. And if you do find that later something has been brought in that way, then restrictions for that person on their visiting have to be put into place, where they have not, you know, respected the fact that contact visits are allowed they have abused that privilege and therefore noncontact visits, at [2375] least for a

period of time, might be instituted. Or that person who visited that day would no longer be permitted to visit.

THE COURT: When you suggest making discriminations among people, do you have any view on whether that might be done generally in advance without regard to discovery of infractions?

THE WITNESS: I don't think that that should be done without having something actually occurring.

THE COURT: Well, do you think there might be a class of inmates, based on the nature of the crime or the person, for whom the anal inspections would not be necessary?

THE WITNESS: I think that is the case, although we know from experience that if you really want to get something in a prison, you will not be the person who will bring it in, you will have somebody else bring it in for you through the visiting room who the administration is less likely to see as desiring to have that item. So you use somebody else to get that in.

I guess that's the best way I could respond to it.

But certainly there are some people that [2376] are far less likely to bring things in. But they might be induced, pressured, subtly or not so subtly, to do so.

But again I would say that if somebody wants to get something in, whether it is this facility or somewhere else, they can find a way. I have used the analogy you can bring in a Sherman tank piece by piece. I think it is amazing that more contraband does not come in than does.

* * * *

[2379] Q It is stipulated that for formal unit [2380] searches, room searches, inmates are not generally permitted to watch the search of their rooms and that on other occasions, during less formal kinds of searches, they be permitted to do so.

Do you have an opinion as to whether that policy is in conformity with accepted correctional practice?

A Yes. I think basically it depends the type of search and the reasons for the search.

In many instances, if the detainee or the inmate is present, is in the area, it is certainly desirable for him to be there and to observe what is being searched, what

might be being picked up as contraband, what is being noted as contraband.

On the other hand, it might be, because of a tip that you have or because you know the nature and personality of the individual, it might be very sound not to have that individual present, because it might be a situation that could become explosive, it might antagonize him. It would be better to do the search without him there and then come back in private rather than out in public in front of the other inmates and go over what was taken.

I observed a search on one of the floors [2381] and I thought it was done very well in terms of the rooms were put back in order, the material was noted. They searched eight rooms. Two of the inmates, detainees, happened to be present. They observed it. And everything was put back in good order.

Certainly the people who were searching knew I was there. I don't think that they knew that I was there to testify in this case and were putting on a show for me. And I thought it was done—* * *

* * *

[2414] A Would you repeat the question?

Q Yes, sure.

It is true, isn't it, that personal property that an inmate possesses while he is in detention has importance to him?

A Yes.

Q And probably a heightened importance to him from what people in the general population feel about their property?

A You mean outside the prison?

Q Yes.

A Equally so.

Q Now, in your experience in the federal system and in New York City and in Missouri, did it ever occur that property that was taken from an inmate on a search was improperly seized, that is to say, that property that a guard thought when he seized it, maybe in good faith, was contraband that later turned out was not contraband?

A Yes.

* * * *

[2434] MR. SHAFFER: Miss Cardamone.

ELISSA CARDAMONE, called as a witness by the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHAFFER:

Q Miss Cardamone, are you currently employed?
A Yes, I am.
THE COURT: You know by now that Miss Cardamone and I are old friends.
Q Are you a correctional officer at the MCC?
A That is correct.
Q How long have you served in that capacity?
A Almost four months.
Q What units have you worked on?
A Unit 3 and Unit 5.
Q Miss Cardamone, in the course of your duties as a correctional officer at the MCC have you had occasion to conduct strip searches of female inmates after visits?
A Yes, I have.
Q In the course of those strip searches have you discovered contraband?
A Yes.
[2435] Q Could you relate any instance or instances in which that occurred?
A I was strip searching a female and I noticed in the vaginal orifice of the female inmate a reddish object.
When it was removed and she subsequently removed it herself, it was discovered to be a red balloon and in the balloon was a packet of heroin, a nickel's worth.
Q Because of your duties as a correctional officer on Unit 5, have you had occasion to have a woman locked in?
THE COURT: How long have you worked there, did you say?
THE WITNESS: Almost four months, three and three-quarters.

Q Was this the only instance where you discovered contraband?
A I found contraband lots of places, lots of times, when you least expect it, it is just there.
On one occasion I saw a guy toss a small brown paper bag which I intercepted and it was filled with marijuana.
Q Was that in a visiting room?
[2436] A This was in a range, tossed it to a general purpose area. It was being tossed to another inmate and as we were approaching the range for the purposes of conducting a search for contraband and as we were entering on the range going up the steps, this man stepped out of the room and tossed the bag to another inmate and I just did one of those jobs (indicating).
Q You caught it?
A Yes.
Q Can you recall any other instances in which you discovered drugs?
A I found some coke once in an aluminum foil in an inmate's room; marijuana here and there.
Once I found one seed, sometimes you find a lot, sometimes a little.
Sometimes you find a dusty residue from it. Once I found a dusty residue of coke, binoculars.

* * * *

[2440] Q You testified as to strip searches and your discovery of marijuana in the vagina on one occasion.
Have you ever on any other occasions discovered contraband hidden in the vagina or the anal area?
A Yes. I got beat for that once. This woman had something in her and was giving me a hard time, sort of scaring me because I am like meek to be doing this sometimes—so that I locked her in the search room and called for help, for assistance.
And as I was doing that, I was keying the door because the count was about to start and to see if [2441] someone was there and my keys got stuck in the door.
Now, I was faced with do I go over, as this was happening I was with my key stuck in the door and I see

this thing coming from under the door of the room and the woman suspect has something in her.

Now, I am struck with the problem do I run to the door and pick up what is being passed out from under the door to another inmate or do I leave the institution keys hanging in the door that is jammed in? I don't know what to do.

I figured if I get beat I will get yelled at but if I mess up with the keys I would get fired so I stayed with the keys.

Whatever it was, she evidently took it out and passed it under the dor and someone else got it. Later in the evening they all wanted Malox so it turned out okay.

Q You never actually determined what it was?

A No, I just know it was something that needs to be passed under a door.

Q At the time of that predicament you described was another officer nearby who could have assisted you in regard to the keys and this room?

A No, because the range I was on didn't have a [2442] phone on it. I didn't have a walkie-talkie.

Q Were you the only officer stationed there at that time?

A Yes, at that time.

Q By the way, you testified as to finding grass and coke. I assume they weren't in the vagina or the anal areas except in the instance you described?

A No.

Q Do you have any knowledge as to where those items come from?

A No.

* * * *

[2545] Q Mr. Richardson, you testified concerning certain visiting procedures.

Is one of your responsibilities as an officer to conduct strip searches of people?

A Yes, sir.

Q Relative to visiting?

A We conduct strip searches on inmates when they come out of the visiting room.

Q Do you do this to women or just men?

A No, we don't strip search women, we have a woman do that.

Q You do it for men on the fifth floor North most of the time?

A 5 North and on 3, yes.

Q When you conduct strip searches of persons is that a search only of the individual in the room with you or are there usually several inmates there at one time?

A I like to have at least maybe two or three of them in there because a lot of times we have quite a few visits and if we took them one at a time we would never really get done.

Q In other words, you search several people at the same time?

[2546] A At least three.

Q Have you ever worked on the third floor?

A Yes, sir.

Q Have you conducted strip searches there?

A Yes, sir.

Q Have you ever stated to an inmate that you would kick his ass?

A Did I say to an inmate I was going to kick his ass?

Q Have you made that statement to an inmate?

A Maybe, I don't remember. I don't recall.

Q Did you ever make a statement to an inmate during a strip search that "You are nothing but a fuck'n punk and I ought to bust you in the face?"

A I don't recall.

Q You don't recall whether or not you made it?

A No, I don't.

Q Did you ever tell an inmate on 3 North that they were being locked in their rooms at night because of the Wolfish suit?

A No.

* * * *

[2603] Q The MCC policy with respect to room searches, and this has been stipulated to in this case, is that during a formal unit search inmates are generally not permitted to view the search of their rooms and that

during less formal searches of rooms, inmates may be permitted to observe such searches.

Do you have an opinion as to the acceptability in terms of correctional practice and standards of this procedure?

A Yes. My opinion is that that is in keeping and accordance with acceptable operating procedures and practices in detention institutions.

Q What factors underlie that practice and policy in detention facilities?

A Again, it is a matter of the degree of security required. In terms of a formal search which would include an in depth type of search of a given area, as contrasted to an occasional search or spotcheck basis or for some particular reason of a single inmate's room [2604] or cell, the requirement that prisoners not be in the immediate area obviously has its basis again in the requirements of security.

It is quite obvious that if a group of officers start a searching process of a housing area at the MCC, if it be a corridor or an area of rooms or in a typical jail if it were a cell block, unless all prisoners are removed from that immediate area, there are a wide variety of opportunities for the confiscation of contraband by prisoners who may have such in their possession and cells.

It can go down the toilet or out the window, swallowed, a wide variety of methods of confiscation of contraband.

Therefore, primarily for security reasons and primarily for the control of a searching process so that prisoners are not constantly gathered around a particular inmate's room or cell to see what is going on, common practice dictates that a group search should be conducted in that manner.

* * * *

[2605] Q It is stipulated that at the MCC inmates are generally not permitted to possess personal property except for a limited number of items like a wedding band and an inexpensive watch or radio purchased at the commissary;

Except on special occasions inmates are not [2606] permitted to receive packages of either personal property or food packages from outside the institution.

Do you have an opinion as to whether these practices are in conformity with accepted and good correctional practice?

A Yes. It is my opinion they are, they do conform to accepted correctional practice, particularly insofar as detention institutions are concerned.

Q What is the basis for your opinion?

A Well, there are many bases for that opinion. There are many reasons for it, not the least of which again is the item of the whole overriding, overall factor of security.

Again, there are many personal problems that arise, many that may or may not be directly related to security and in some respect quite comparable to the matter of visiting that we just discussed.

First of all, the possession of a wide variety of valuable items by an inmate opens up obviously the possibility of theft of those items by other inmates and in rare occasions perhaps by unscrupulous employees or whoever there may be in the immediate area.

I can conceive of a person coming in with an expensive diamond ring, for example, and being permitted [2607] to retain that ring during the course of his incarceration.

This would be quite foolhardy it seems to me on the part of a jail administrator to permit that kind of practice. The first thing that arises is, as I have said, the matter of theft possibility.

You then have the possibility of many other inmates who have no possessions or very, very limited possessions, least of all a diamond ring or an unusual amount of money or an expensive watch or what-have you. This creates again a series of what we might call human problems, you have it and I don't, and that always creates a very difficult situation in the close living that would be experienced in a detention unit.

I would certainly not be in favor of an unlimited privilege of having unlimited personal possessions.

It seems to me too that is in the area of the protection of the inmate. We are protecting him, in the sense we are precluding the possibility of theft of that piece of valuable property.

Q With respect to receiving packages either of personal property or food packages from outside the institution, is the prohibition on the receipt of such items in conformity with accepted correctional [2608] practice?

A I would say generally yes, that is in conformity. In my opinion again we operated in that manner, limiting packages to a certain time of year, for example the best illustration is the Christmas period.

Limiting the contents of those packages to items of necessity.

It seems to me too if the jail administrator permitted the admission of unlimited food items, for example, most of which would be in the form of cooked or baked goods probably or raw material such as meat, uncooked foodstuffs, that this immediately serve to create an ever increasing problem of sanitary control, providing for perhaps rodents, mice, insects, roaches, problems of pest control.

Q What if any secure problems would be associated with the receipt of packages?

A Probably the most common problem of the admission of goods, whether it be the traditional file in the cake kind of situation that is well known to probably everyone, probably more important and a more practical kind of problem that exists certainly in metropolitan areas is in the introduction of prescription medications, narcotics, marijuana, et cetera, that can [2609] be introduced for example in heels of shoes, seams of clothing.

I think the jail administrator today—certainly I have experienced at least the limited introduction of contraband by those various devious methods and this simply provides another opportunity for the breakdown of security in an institution.

Likewise, the reverse of the coin is as we have said in the case of visitors and cash and personal belongings, it creates the age-old problem of you have it and I don't have it. I don't think this needs any further elaboration.

Q It is also stipulated in this case inmates are permitted to spend up to $50 per month at the commissary and within that $50 per month limitation, on a given

weekday are permitted to spend up to $15 of that $50 limit.

Is this spending procedure—have you formed any opinion as to whether this spending procedure at the commissary is in conformity with accepted correctional practice?

A Yes, I think that is a reasonable procedure, a reasonable amount of money in general.

* * * *

[2643] A I would say that particularly in long-term institutions medical detectors are probably in routine use.

Of course, we can break down metal detectors by whether you have in mind the airport-type of detection device such as is at the MCC or whether you do it by the hand frisk.

Q Using both, aren't there many in detention facilities?

A Yes. I have only used in my experience the hand frisk type.

Q Is it your view—isn't it true that those detectors are sensitive enough to pick up metal objects that an inmate is secreting on his clothing or on his body?

A Well they are, yes. This depends on the delicateness might be the word of the particular device.

I am sure as you well know you could walk through one of these devices and not have the flashing red light and the next walk through and it would.

Q But that could be controlled?

[2644] A Apparently, yes.

* * * *

[2738] Q Specifically, in reference to your mention of security needs, I would like you to assume that after a family visit or social or legal visit, an inmate is brought into a shakedown room where he is asked to remove his clothing and the clothing is searced and the individual is given a visual strip search, which includes opening his mouth, raising his arms, bending over and exposing his rectal area.

Do you have an opinion as to whether this practice imposes a level of stress upon inmates such as to compromise their mental well being?

A Yes, I have an opinion. Essentially it is that in my awareness, both talking with staff and others, that this becomes a kind of automatic, objective process that is accepted by the parties concerned as something that is part of the system and may not be liked, but I am not aware of any irreparable damage to a person's psyche which is done by such a process.

* * * *

[2740] Do you have an opinion as to whether this practice imposes a level of stress upon inmates that would compromise their mental well being?

A I would answer that in the same way that, yes, I have an opinion, again with the proviso that while this is something that may not be wished, that it is part of the reality of the circumstance in which it is not only appropriate from a standpoint of the institution's security, but is something to which people can adapt and recognize and I would doubt that anybody was so severely upset by such an experience that they would require psychiatric care or, again, that there is a question of after effects of it.

To the degree that one has something to hide it can be very unsettling but you are introducing then another variable.

* * * *

[2767] BY THE COURT:

* * * *

A Well, except I don't know that the—it is clearly a matter of, the question is when you are talking about rectal searches, it is my understanding that they don't do rectal searches here; they do observation.

Q Whatever you call that, whatever that is, the spreading of the buttocks.

A That's anal inspection.

Q That inspection, and that's what I am asking you about, what security objective does that serve, based on your experience in penal institutions?

A Well, the primary security is to try—the only thing would be if there were a bag of something, some evidence of something which was still protruding from the anus.

Q But what do you mean by that?

A A bag—

[2768] Q Narcotics?

A Yes, primarily drugs.

Q That's what you mean by security?

A Yes.

Q You don't mean weapons or threats—

A No. I'm sorry. Drugs.

BY MR. MUSHLIN:

Q Isn't it true as a doctor, doctor, that if someone were to secrete something past his sphincter muscle in his anus or, I think, rectum, whatever, it wouldn't be observed on a visual inspection?

A The odds are that it wouldn't be discerned, be seen.

Q Regarding the people who have been diagnosed as mentally ill who are held on 9 South, you don't know, do you, whether or not any of those have been diagnosed as dangerous to others or themselves?

A I don't know. I didn't assess individual cases.

Q You didn't do any in-depth psychological interviews with anybody at the MCC, did you?

A No.

* * * *

[2860] Q Mr. Carlson, do you have an opinion as to the appropriateness from a correctional standpoint of visiting within the living units at the New York MCC?

A Do you mean inmate visiting on the unit—

Q I mean family or visiting inmates within the living units?

A I would think it would present a very serious custodial problem and also would deprive the other inmates to access to the multi-purpose areas if they were used for visiting.

Q Mr. Carlson, do you have an opinion as to the appropriateness or necessity of a strip search procedure after contact visits, including a rectal examination?

A Yes, I think if you permit contact visits in an institution such as the MCC, you must require a strip search in order to prevent the introduction of major contraband into the institution.

Q Is this a standard practice throughout the Bureau of Prisons?

A In all our Metropolitan Correctional Centers and a vast majority of the institutions it is required.

Some of the minimum security camps or treatment centers obviously have the option of not using it under [2861] those circumstances but those are a different type of institution and offender confined there.

Q Does the requirement of a strip search procedure a deterrent to the introduction of contraband?

A I believe it is.

THE COURT: What do you base that on?

THE WITNESS: The volume of contraband that is introduced into institutions is at a fairly low level. I have never, of course, worked in the State system that didn't provide a strip search but I think based on our experience there must be a deterrent effect or we would have a tremendous volume of contraband, drugs and other type of contrabands introduced into our institutions.

Q Is it your view, Mr. Carlson, that if the strip search procedure is to be effective it has to be automatically applied to all inmates?

A Yes, I think if we are going to segregate out one group only for the strip search they are putting pressure on the other inmates and they can intimidate them to bringing in contraband items knowing full well that the other group may not be subject to the same degree of physical search.

* * * *

[2863] Q Are there any security problems associated with allowing inmates to bring in clothing of their own?

A Very definitely narcotics, currency, other contraband could very easily be secreted in the lining of coats and hats and other apparel and we have actually detected a considerable amount of contraband from my personal experience in the lining of clothes, for example.

Q Mr. Carlson, what is the basis for the Bureau of Prisons policy restricting the possession of personal property to those items which are either issued by the institution or can be bought in the commissary with a few [2864] exceptions, such as shoes, socks, wedding bands and a religious medallion?

A The primary one is security. The property which can be brought in obviously presents the likelihood or possibility certainly of the introduction of narcotics, currency, weapons—narcotics primarily.

Q What is the basis for the restriction on personal property?

A Again, the amount of physical space available in the institution certainly is a consideration and, again, the have and the have nots issue, trying to treat all inmates as equally as we possibly can is certainly another consideration.

* * * *

[2890] Q Isn't it true that the federal system has a urine analysis test which they can determine whether drugs are becoming a problem in the institution?

A Yes, they do.

Q Do you know whether those have been used at the MCC?

A I don't know if they have at this point in time. Our full policy goes in effect on April 15 which requires all institutions using urine analysis.

Q Wouldn't that be fairly effective in determining whether drugs were becoming a problem at an institution?

A It would be not only another deterrant but a way to measure the impact of the problem.

* * * *

[2957] Q Dr. Bowen, I would like you to assume that there are periodic searches of rooms and dormitory areas at the MCC and that on some occasions but not all inmates may be permitted to observe the search?

But that on other occasions they are forbidden from observing the search of their room or dormitory area.

Do you have an Opinion as to whether this practice creates intolerable stresses upon the inmate's well being and in particular with respect to their secondary needs for privacy?

A No, I don't think it is intolerable, with the same kind of proviso I went through in answer to your previous question, namely, that it should be a rational pro-

cedure, equitable, no inmate should be picked out for [2958] special searching except with due cause;

And that is a procedure that can be seen to be within our culture and to be part of the ordinary operation of the institution.

* * * *

[2972] Q What's your position?

A Senior correction officer.

Q How long have you held that position at the MCC?

A A year and a half.

Q In the course of performing your duties as senior correctional officer have you had occasion to conduct strip searches in the shakedown room after visiting hours?

A Number of times, right.

Q On those occasions have you ever found contraband?

A Many a time, right.

Q Can you recall on approximately how many occasions you found drugs as a result of the strip search?

A Oh, about six times.

Q Can you describe any of those instances?

A Well, one is—call the name out?

Q No, you don't need to specify the name of the inmate; just describe when it occurred and what happened.

A Well, one of my visits I caught drug coming through in a pile of cellophane through one of the inmates [2973] toe of his shoe, and twice I have caught it coming through under the middle of a shoe like inside of the sneaker, the whole inside pulled out and stuck up under the bottom.

Q On any other occasions have you discovered drugs?

A Yes. They were bringing it in like in plastic envelope-type and just close it right in your jacket pocket like this, stuck down inside.

Q Have you had occasion to find contraband other than drugs?

A Coins.

Q On approximately how many occasions have you found money?

A A number of times.

Q Any other kind of contraband besides money or drugs?

A No.

MR. SCHAFFER: Thank you, Mr. Lattimore. No further questions.

CROSS EXAMINATION

BY MR. YOUNG:

Q Mr. Lattimore, I'm Mike Young. I'm representing the inmate petitioners in the case.

[2974] A Yes.

Q Mr. Lattimore, whenever youi conducted strip searches have you always conducted them with only one person in that airlock area at a time?

A One person at a time.

Q You have never had more than one person in there?

A No.

Q Have you ever found drugs or any other type of contraband secreted in the anal area?

A I didn't hear that word.

Q In the anal area, when the person bends over to spread his cheeks?

A No.

Q Have you ever found drugs or any other type of contraband secreted around the genital area?

A No, not on his body that way.

MR. YOUNG: No questions, your Honor.

MR. SCHAFFER: I have nothing further.

THE COURT: All right. Thank you, Mr. Lattimore.

(Witness excused.)

PET. EXHIBIT 11a

[U.S. Dist. Court, S.D. of N.Y.]

MAGAZINES ON BOOK SHELF—3/8/77

	Amt. of Magazines
January 17, 1974	1
Spring, 1976	1
February, 1976	1
April, 1976	1
May, 1976	1
July, August, 1976	1
August 23, 1976	1
August, 1976	2
September, 1976	2
September 13, 1976	1
November 8, 1976	1
November 15, 1976	1
December, 1976	1
January, February, 1977	1
February 5, 1977	1
February 19, 1977	1
February 26, 1977	1
March 5, 1977	1
Winter, 1977	1

Witnessed by Mr. T. Whitehead, C.O.

PORTIONS OF GOVERNMENT'S EXHIBIT #RX-QQQ

The Bureau of Prisons now proposes to construct a new facility which will not only provide detention facilities, but also provide a wide range of other correctional services. Planning funds in the amount of $300,000 were provided in the 1966 appropriation in order to initiate the project but until a few months ago persistent efforts to acquire a site were unsuccessful. Now negotiations are underway for a specific site and construction could be started in 1971.

The new facility, to be designated the New York Metropolitan Correctional Center, has been planned as a multipurpose complex wherein full correctional services will be provided to better serve the community and the courts. The basic design considerations and related center components are described in the following paragraphs.

--Provisions for detention of people who are awaiting trial, and for those serving short-term sentences are now inadequate. Serious crowding needs elimination and more adequate services need to be provided. These kinds of shortcomings were specifically cited in the report on detention facilities throughout the nation, prepared by the President's Commission on Law Enforcement and the Administration of Justice. The proposed center is intended to provide a new model for the organization and housing of local correctional and detention services.

Detention Facility

- Includes housing for pre-sentenced and short-term sentenced offenders. Youth will be separately housed from the adults in both male and female sections. Capacity: Male 320; Female 30.
- Multi-purpose activity space for chapel services, library and group therapy activities.
- Multi-purpose indoor recreation facilities for exercise and movies.
- Outdoor recreation
- Program space for educational, vocational training or correctional therapy activities.

- Infirmary for general examination and treatment, including an 11-bed in-patient nursing and dental clinic. Major diagnostic and surgical work will be contracted for outside the Center, making use of resources already available in the community.
- Food service will be provided in a central dining cafeteria, serving all men except those whose security requirements necessitate eating in, or near, their quarters. Women will be served in separate dining facilities, although all food will be centrally prepared.
- Normal administrative and service functions, including casework services and visiting facilities.

—The Federal Courts are increasingly seeking diagnostic services from the professional staff of the Bureau of Prisons before sentencing offenders. Present resources are usually distant from the community, inadequate and frequently produce lengthy delays. The proposed community location, with a professional staff, will vastly improve this important service. Offenders who do not require confinement can be seen on an out-patient basis, avoiding the further complications of severing work and family ties during a period of study and observation.

Diagnostic Center

- Psychiatric, psychological and casework services.
- Testing and interview facilities, including vocational testing.
- In-patient suite for 15, located with the infirmary, serving psychiatric evaluation cases.

—In addition, the facility will include a Community Treatment Center. This program will provide pre-release services to offenders returning from institutions, as well as correctional services for parolees and probationers if Congress provides authority by legislation already introduced (H.R. 809, H.R. 2175 and S. 3261).

Community Treatment Center

- Casework services for both residents and "out-patient" cases.
- Respondent living facilities for 40.

—The Center activity will also involve development of alternatives to pretrial detention where feasible, and alternatives to commitment for certain offenders, identification of increased resources available to agencies responsible for probation and parole services, and technical assistance to improve the capacity of state and local correctional agencies. The Center will serve as a regional focal point for the direction of community and correctional resources to effectively intervene in criminal behavior and careers.

PORTIONS OF STIPULATION OF FACTS

V

A.

V-1 There are two visiting rooms on Floors 5, 7, 9, and 11 and one visiting room on Floors 2 * and 3. See Stipulation I-1, supra.

V-2 Since April 12, 1976 it has been the MCC policy that no more than 25 persons (both inmates and visitors) are permitted into a visiting room at one time. Petitioners dispute whether this policy is followed.

V-3 The visiting rooms do not contain food vending machines. During the week of February 28, 1977, soft drink machines were installed in the visiting rooms on floors 3, 7, 9 and 11; prior to that time the fifth floor visiting area had a soft drink machine.

V-4 Smoking is not permitted in visiting rooms, although inmates and/or visitors at times do smoke in the visiting rooms.

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* The visiting room on the Second Floor is not used, inmates housed on this floor receive visitors in a 5th Floor visiting room.

V-5 It is the policy of MCC to subject inmates to a strip search, with visual rectal and vaginal examinations, incident to visits.

V-6 It is the MCC policy that each floor has the following schedule for visiting:

2nd and 5th Floors	4:30-7:30 p.m. Monday through Friday 8:30-11:30 a.m. Saturday and Sunday
9th Floor	8:30-11:30 a.m. seven days a week
7th and 11th Floors	12:30-3:30 p.m. seven days a week
3rd Floor	4:30-7:30 Monday, Wednesday and Friday, or by prior special arrangement

Petitioners dispute whether this policy is followed.

V-7 At the present time, other than during the scheduled visiting hours, including the special attorney visiting hours (4:30 to 6:30 P.M. in the 11th Floor visiting rooms) and certain religious services which are from time-to-time held in the visiting rooms, the visiting rooms are not regularly scheduled for any other activity.

V-8 Attached hereto as Exhibit V-8 and made a part hereof is a copy of MCC guidelines on visiting, effective as of October 15, 1975. Petitioners dispute whether these guidelines are followed.

V-9 Inmates are normally permitted to receive visits from only those persons whose names appear on their visiting lists. Inmates are normally permitted to have six names on their visiting lists at one time. It is the MCC policy that inmates are permitted to change or rotate the names on their visiting lists; petitioners dispute whether this policy is followed.

V-10 Since April 12, 1976, the bathrooms in the visiting rooms have been locked during visiting hours.

V-11 Prior to a visit, each visitor is searched in the lobby by a magnetimeter and some visitors are also patted down.

V-12 All purses, briefcases, and other belongings of visitors are hand-searched in the lobby prior to a visit.

V-13 All visitors have their left hand stamped with a phosphorescent identification mark when they register in the lobby for a visit. Each visitor's hand is then checked for this identification mark when he arrives at the visiting room, before he leaves the visiting room, and before he leaves the lobby. Before an inmate enters the visiting room for a visit, both hands are marked with invisible ink.

B.

V-14 The following number of telephones are located in each residential unit:

Unit	Pay Telephones	Long Distance Telephones
Hospital unit	1	1
Honor unit	1	2
3	2	2
5-N	2	2
5-S	2	2
7-N	2	2
7-S	2	2
9-N	2	2
9-S	2	2
11-N	3	2
11-S	4	4

Effective February 14, 1977 each inmate is permitted to draw up to $5.00 in change per week from his commissary account to use for the telephones; prior to that time the limit was $4.00 per week.

C.

V-15 Conjugal visits are not permitted at MCC.

V-16 In addition to the windows described in I-1 *supra*, each residential room at the MCC (except those on 5 South) has a window approximately 4¼″ x 38″ in the door to the room. The doors to the rooms on 5 South do not contain windows.

XIII

XIII-1 Searches of the persons and rooms of the inmates at MCC are carried out at irregular intervals.

XIII-2 Inmates are not always permitted to observe searches of their rooms. During a formal unit shakedown, when a particular portion of a residential unit is cleared of inmates and a search is conducted, inmates are not permitted to watch searches of their rooms; during the less formal searches which are conducted more often, correctional officers have the discretion to permit the inmate to stand at the doorway of his room to observe the search.

XIII-3 The Bureau of Prisons and MCC definition of contraband is contained in paragraph 702 of the Custodial Manual, Policy Statement 20001.1B which provides as follows:

702. CONTRABAND

1. Contraband may be best defined as any item or article inside an institution that was not issued by the institution, purchased in the commissary, purchased through approved channels or approved for issue by an appropriate staff member. Authorized items may be considered contraband when found in excess quantities, or altered from original status.

2. The following items shall always be considered contraband, within any federal penal or correctional institutions:

a. Guns and firearms of any type.

b. Ammunition, explosives.

c. Knives and tools not provided in accordance with this manual.

d. Hazardous and poisonous chemicals and gases.

e. Narcotics and drugs. These can be dispensed and in the possession of offenders only as authorized by the institution medical department.

f. Intoxicants, such as liquor and alcoholic beverages.

g. Currency, where prohibited.

XIV

XIV-1 (a) Inmates at MCC are normally not permitted to bring or receive packages, including food packages or personal effects, from outside the institution except that during the Christmas holiday season, each inmate is permitted to receive one package from outside the institution. In addition, on certain Jewish holidays, Jewish inmates are permitted to have special foods brought to the institution.

(b) Inmates are permitted to have any items specifically authorized by the Unit Manager, Case Worker or Chief Correctional Supervisor.

XIV-2 Inmates are not normally permitted to have electric shavers or personal typewriters.

XIV-3 Inmates are prohibited from spending more than $15 per week up to $50 per month at the commissary (except as noted on the commissary list, *see* Exhibit XIV-4). Prior to December 1, 1976, the limit on monthly commissary purchases increases to $45.00.

XIV-4 Inmates are not permitted to visit the commissary which is located in the basement. Rather, once a week inmates are permitted to order items from a commissary list. Attached hereto and made a part hereof as Exhibit XIV-4 are copies of commissary lists dated August 15, 1975, March 1, 1976 and the current commissary list. Petitioners dispute whether all the items on these lists are available for purchase. For certain items (such as watches, radios, etc.) it is the MCC policy to post a picture and literature describing the item in the units. Petitioners dispute whether this policy is followed.

SUPREME COURT OF THE UNITED STATES

No. 77-1829

GRIFFIN BELL, ET AL., PETITIONERS

v.

LOUIS WOLFISH, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 2, 1978

The motion of respondent for leave to file *in forma pauperis* is granted. The petition for writ of certiorari is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 277374 190